IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 231

HC/S 915/2021 (Summons No 1507 of 2022 and Registrar's Appeal No 169 of 2022)

Between

(1) Daniel Kroll

… *Plaintiff*

And

(1) Cyberdyne Tech Exchange Pte Ltd
(2) Wong Yoke Qieu, Gabriel
(3) Bai Bo
(4) Lily Hong Yingli

… *Defendants*

JUDGMENT

[Civil Procedure — Striking Out]
[Companies — Oppression — Minority Shareholders]

CONTENTS

Kroll, Daniel
v
Cyberdyne Tech Exchange Pte Ltd and others

[2022] SGHC 231

General Division of the High Court — Summons No 1507 of 2022 and Registrar's Appeal No 169 of 2022
Mavis Chionh Sze Chyi J
5 July 2022

21 September 2022

Mavis Chionh Sze Chyi J:

Introduction

1 In minority oppression claims, a common remedy granted by the courts is an order for the majority shareholder to buy out the minority shareholder. However, if the majority shareholder has made such a buyout offer to the minority shareholder and the latter does not accept the offer, is it then open to the majority shareholder to strike out the minority shareholder's claim of minority oppression and relief thereunder? In HC/SUM 1507/2022 ("Summons 1507"), this was what the second to fourth defendants sought to do in applying under Order 18 r 19 of the Rules of Court 2014 ("ROC 2014") for the plaintiff's Statement of Claim ("SOC") in HC/S 915/2021 ("Suit 915") to be struck out.

2 Suit 915 is a claim of minority oppression under s 216 of the Companies Act (Cap 50, 2006 Rev Ed) ("CA") brought by the plaintiff Mr Daniel Kroll

("Mr Kroll"). In Suit 915, Mr Kroll asserts that the second, third and fourth defendants have conducted the affairs of the company ("CTX", the first defendant) "as they pleased and in a manner that prioritised their own interests in relation to CTX, and that was oppressive and prejudicial to [the plaintiff]"[1]; and also that these three defendants acted so as to cause his (Mr Kroll's) shareholding in the company to be wrongfully and severely diluted[2].

3 In the first prayer in Summons 1507, the second to fourth defendants ask that the SOC be struck out in its entirety. The crux of their argument is that the plaintiff has rejected a reasonable buyout offer made by the second and fourth defendants, and this offer essentially delivers "everything that the plaintiff is seeking in the suit"[3] such that the continuance of the suit constitutes an abuse of process. In their second and third prayers, the second to fourth defendants ask (in the alternative) that specific paragraphs in the SOC be struck out, either on the ground that they are frivolous or vexatious, or that they would prejudice, embarrass or delay the fair trial of the action.

4 I heard parties on 5 July 2022. After the hearing, parties wrote in on 8 July (the plaintiff), 15 July (the second to fourth defendants) and 18 July (the first defendant), to make what essentially amounted to further submissions. Having considered the oral and written submissions of parties, I decline to allow the application for striking out. While the buyout offer is reasonable, there is no abuse of process as the offer has not covered all the disputed issues and / or all reliefs sought in Suit 915; and it was reasonable for Mr Kroll to have proceeded with the action in the circumstances.

---

1 Statement of Claim (Amendment no. 1) at paras 53 – 67.

2 SOC (Amendment no. 1) at paras 68 – 95.

3 Transcript 5 July 2022, p 6 at lines 13 – 18.

5 In respect of paragraphs 57 to 59 of the SOC (Amendment No. 1), I am of the view that the pleadings therein are somewhat clumsily drafted, but that the defects are not such as to warrant my striking them out at this interlocutory stage.

6 In respect of paragraphs 55 and 56 of the SOC (Amendment No. 1), I find the pleadings therein to be legally unsustainable, and the defects are such that I do not think they can be improved with amendment. I am of the view that these two paragraphs should be struck out

7 In the paragraphs that follow, I set out the detailed grounds for my decision.

8 At the hearing, parties also made submissions in relation to HC/RA 169/2022, which was an appeal by the second to fourth defendants against the decision of the Senior Assistant Registrar ("SAR") in relation to security for costs; specifically, in relation to the quantum of security ordered *per* each of the second to fourth defendants. Having declined to strike out the Statement of Claim, in the last part of my judgment, I deal with the appeal against the SAR's order on security for costs.

Facts

Parties to the dispute

9 The plaintiff Mr Kroll has been a shareholder of the first defendant ("CTX") since 31 March 2019. He was appointed as a director of CTX on or around 3 June 2020 and resigned on 22 February 2021.[4]

[4] SOC (Amendment No. 1) at para 7.

10 The first defendant CTX is a private limited company incorporated in Singapore on 30 July 2018.[5] Mr Kroll claims that CTX is principally in the business of providing corporate finance advisory services and/or is a holding company.[6] The second to fourth defendants claim that following the Extraordinary General Meeting ("EGM") held on 30 April 2021, CTX pivoted towards a fresh business concept spearheaded by the third defendant Dr Bai Bo ("Dr Bai") to operate a green carbon exchange.[7]

11 The second defendant Mr Wong Yoke Qieu, Gabriel ("Mr Wong") is reflected in CTX's ACRA records as having been a director from 30 July 2018 to 8 May 2020.[8] Mr Kroll claims that from 8 May 2020 onwards, Mr Wong was a shadow director of CTX,[9] which Mr Wong denies.[10]

12 The third defendant Dr Bai has been the Chief Executive Officer ("CEO") of CTX since around 5 May 2021.[11] He is reflected in CTX's ACRA records as having been a shareholder since 29 April 2021 and a director since 4 May 2021. Mr Wong claims that Dr Bai became involved with CTX in or around the second half of 2020 and was at all times aware of CTX's affairs. Dr Bai avers that he first became involved in CTX from the fourth quarter of 2020.[12]

---

5 SOC (Amendment No. 1) at para 8.

6 SOC (Amendment No. 1) at para 8.

7 Wong's Defence (Amendment No. 2) at para 15; Bai Bo's Defence (Amendment No. 2) at para 11; Hong's Defence (Amendment No. 1) at para 6.

8 SOC (Amendment No. 1) at para 9; Wong's Defence (Amendment No. 2) at para 16.

9 SOC (Amendment No. 1) at para 9.

10 Wong's Defence (Amendment No. 2) at paras 16 and 24.

11 SOC (Amendment No. 1) at para 10; Bai Bo's Defence (Amendment No. 2) at para 14.

12 Bai Bo's Defence (Amendment No. 2) at para 15.

13 The fourth defendant Ms Lily Hong Yingli ("Ms Hong") was, along with Mr Wong, a co-founder of CTX.[13] Mr Kroll claims that Ms Hong was at all material times a shadow director of CTX.[14] Ms Hong denies this[15] and avers that she was merely CTX's technology consultant and assisted in fundraising efforts.[16]

Background to the dispute

Set-up of CTX

14 Mr Wong incorporated CTX on 30 July 2018.[17] By March 2019, Mr Wong had secured (with Ms Hong's help)[18] investor funding in the form of:[19]

(a) An equity investment of SGD10 million from Xiamen Anne Corporation Limited ("Xiamen Anne"), a company incorporated in the People's Republic of China, for a 10% shareholding in CTX; [20] and

(b) An investment of approximately SGD810,000 (or EUR533,000) from Mr Kroll for 81,000 shares (or a 1.40% shareholding) in CTX pursuant to a Subscription Agreement dated 31 March 2019 ("Subscription Agreement").[21]

---

13 SOC (Amendment No. 1) at para 13; Hong's Defence (Amendment No. 1) at para 13.

14 SOC (Amendment No. 1) at para 14.

15 Hong's Defence (Amendment No. 1) at para 13.1.

16 Hong's Defence (Amendment No. 1) at paras 13.1–13.3, 14–18.

17 CTX's Defence at para 3.

18 CTX's Defence at para 5.

19 CTX's Defence at para 5.

20 CTX's Defence at para 5.

21 CTX's Defence at para 5; SOC (Amendment No. 1) at para 21; Kroll's affidavit at para 9.

First unsuccessful MAS license application in May 2019

15 CTX required two licenses from MAS: a Capital Markets Services ("CMS") license and a Recognised Market Operator ("RMO") license ("the MAS licenses").[22] The first license application, made on 31 May 2019, was unsuccessful. MAS did not approve of Mr Wong holding the position of director or CEO of CTX, nor of his holding more than 5% of CTX's shares.[23] According to Mr Kroll, MAS was concerned about Wong's association with the Chinese Communist Party, and did not wish for Wong to be the CEO of CTX, or a director of CTX, or to hold a controlling shareholding stake in CTX, or to hold more than 5% of CTX's shares.[24] According to Mr Wong, this was because Mr Wong's previous employment had been subject to a disputed termination.[25]

16 Subsequently, several changes were made within CTX, which CTX avers were to facilitate its second application to MAS.[26] On 8 May 2020, Mr Wong resigned as director and transferred 4,605,953 of his CTX shares to Mr Kroll. Mr Wong's position is that Mr Kroll agreed orally to hold these shares on trust for Mr Wong while Mr Wong sourced for a buyer to purchase these shares.[27]

17 Both Mr Kroll and Mr Wong entered into a Share Trust Agreement dated 12 May 2020, under which the former held 4,605,938 of the latter's 4,887,566 shares in CTX on trust for him ("the Trust Shares").[28] Following the share

---

22 CTX's Defence at para 6.

23 CTX's Defence at paras 7–8.

24 SOC (Amendment No. 1) at para 30.

25 Wong's Defence and Counter-claim (Amendment No. 2) at para 51.

26 CTX's Defence at para 10.

27 Wong's Defence and Counter-claim (Amendment No. 2) at para 53.

28 SOC (Amendment No. 1) at paras 25–26; Kroll's affidavit at para 11 and DK-1, Tabs 3 and 4.; Wong's Defence and Counter-claim (Amendment No. 2) at paras 54–55.

transfer, Mr Hong and Mr Kroll's respective legal shareholdings were reflected in ACRA's records as follows:

	Number of CTX shares	Percentage of shares in CTX
Mr Hong	281,613	4.85%
Mr Kroll	4,686,953	80.72%

18 On Mr Hong's request, Mr Chong (who had been COO and director of CTX since May 2019) was appointed as CEO in place of Mr Hong on 23 May 2020.[29] Mr Kroll[30] and Ms Chan Mei Ling ("Ms Chan") were subsequently appointed as directors.[31]

19 On or around 28 May 2020, CTX's ACRA records were amended to reflect that Mr Kroll's shareholding had been reduced by 26%, while Mr Chong and Ms Chan now each held 17% and 9% of CTX's shares respectively.[32] According to Mr Kroll, he understood from Mr Wong that some of the Trust Shares had been transferred to Mr Chong and Ms Chan in order to allow CTX to qualify for a government grant that required 30% of CTX's shares to be held by Singaporeans.[33] Mr Wong has a different narrative: according to him, the shares were transferred to Mr Chong and Ms Chan in part as "sweat equity", in return for

29 Wong's Defence and Counter-claim (Amendment No. 2) at para 56.

30 Kroll's affidavit at para 13; SOC (Amendment No. 1) at para 37(a).

31 CTX's Defence at para 10.

32 Wong's Defence and Counter-claim (Amendment No. 2) at para 59.

33 SOC (Amendment No. 1) at para 28; Kroll's affidavit at para 12 and DK-1, Tab 5.

their contributions and to incentivise them as senior employees, with the remaining to be purchased by Mr Chong and Ms Chan at prices to be agreed.[34]

Second MAS license application in 2020

20 On 5 June 2020, CTX made its second licence application to MAS.[35] On 14 December 2020, MAS informed CTX that it would be prepared to grant approval ("in-principle approval") for the license application subject to the fulfilment of certain requirements within 3 months by 13 March 2021 ("IPA deadline"), including (*inter alia*) requirements that:

(a) CTX give an undertaking to maintain a sound financial position and high level of professional expertise at all times; and

(b) CTX meet the financial requirements applicable to CMS licence-holders under the relevant subsidiary legislation.[36]

21 The IPA deadline was later extended to 30 April 2021 on CTX's request.[37]

Events of December 2020 to March 2021

(1) Involvement of Dr Bai

22 As for the involvement of Dr Bai in CTX, according to Dr Bai, his friend Ms Hong,[38] had told him in early 2020 that she was offering her technical

---

34 Wong's Defence and Counter-claim (Amendment No. 2) at paras 56–58, 61.

35 CTX's Defence at para 11.

36 CTX's Defence at para 12.

37 Wong's Defence and Counter-claim (Amendment No. 2) at para 101.

38 Bai Bo's Defence (Amendment No. 2) at para 15.1.

expertise to CTX.[39] In November 2020, Ms Hong told Dr Bai that CTX was in financial need and seeking investment.[40] He was informally agreeable to investing and participating in CTX,[41] and negotiated with Mr Wong to purchase 290,322 of the CTX shares registered to Dr Kroll for SGD1.25 million. Dr Bai states that he signed a share purchase agreement dated 29 November 2020, which was not completed as Mr Kroll was not agreeable to the share transfer.[42]

23 In December 2020, Dr Bai was informed that MAS had granted CTX an in-principle approval for its license applications, and that CTX was facing cash flow issues and required investors and funding to meet the required conditions by the IPA deadline.[43] Dr Bai extended to CTX an interest-free loan of USD140,000, repayable by 31 March 2021 (later extended to 30 June 2021)[44], under a convertible loan agreement dated 29 December 2020 ("1st CLA").

(2) Resignation of Mr Chong and appointment of new director

24 On or around 30 December 2020, Mr Chong resigned as CEO of CTX.[45] Mr Wong and Ms Hong initially decided to present Mr Kroll as the replacement CEO[46] but eventually proposed Dr Bai instead.[47] According to Dr Bai, he was

---

39 Bai Bo's Defence (Amendment No. 2) at para 15.2.

40 Bai Bo's Defence (Amendment No. 2) at para 15.4.

41 Bai Bo's Defence (Amendment No. 2) at para 15.6.

42 Bai Bo's Defence (Amendment No. 2) at paras 31–32.

43 Bai Bo's Defence (Amendment No. 2) at paras 33–34.

44 Bai Bo's Defence (Amendment No. 2) at paras 35.1–35.2.

45 Wong's Defence and Counter-claim (Amendment No. 2) at para 63; Statement of Claim at para 34.

46 SOC (Amendment No. 1) at para 37(d); Bai Bo's Defence (Amendment No. 2) at para 37; Wong's Defence and Counter-claim (Amendment No. 2) at para 64.

47 SOC (Amendment No. 1) at para 37(d); Bai Bo's Defence (Amendment No. 2) at paras 38–39, 43; Wong's Defence and Counter-claim (Amendment No. 2) at para 66.

agreeable to being the proposed CEO candidate on the condition that he would have full control over CTX's business and corporate governance.[48]

25 Dr Bai's account of how he came to be involved in CTX is disputed by Mr Kroll[49].

(3) 2021 Shareholding Adjustments

26 According to Mr Kroll, on 18 January 2021, he learnt from Ms Hong that Dr Bai, Asia Green Fund (of which Dr Bai was CEO)[50] and Ms Chan had purchased CTX shares at much lower valuations than he had under the Subscription Agreement. Mr Wong and Ms Hong subsequently agreed that Mr Kroll's shareholding percentage would be adjusted upwards. On 10 February 2021, Mr Wong also agreed to give Mr Kroll additional shares in return for Mr Kroll's past contributions to and involvement in CTX. In total, Mr Kroll's total shareholding was to be adjusted to 7.67%.[51] On 11 February 2021, Mr Kroll and Mr Wong entered into a Share Trust Termination Agreement and a Deed for Transfer of Additional Shares to put the above arrangements into place.[52]

27 Again, Mr Wong has a different narrative. According to Mr Wong, he succumbed to pressure "tactics" applied by Mr Kroll, shortly before the 12 May 2020 Share Trust Agreement was due to expire, and in circumstances where much time and effort had already been expended to obtain MAS' in-principle approval and to meet the conditions by the (then) 31 March 2021 IPA deadline:

---

48 Bai Bo's Defence (Amendment No. 2) at para 42.

49 Kroll's Reply to 3rd Defendant's Defence (Amendment No. 2) at paras 27–28.

50 Bai Bo's Defence (Amendment No. 2) at para 41.

51 SOC (Amendment No. 1) at paras 38–39.

52 SOC (Amendment No. 1) at para 41.

Mr Wong avers that it was only due to the pressure placed on him by Mr Kroll that he gave in to the latter's demands to be given shares and an uplift in his shareholding for no payment.[53]

(4) Debts incurred by CTX

28 As stated above at [23], Dr Bai extended a loan of USD140,000 to CTX under the 1st CLA. In 2021, Dr Bai extended two more loans to CTX:

(a) Under the 2nd CLA dated 28 January 2021, an interest-free loan of USD200,000 repayable by 30 April 2021;

(b) Under the 3rd CLA dated 28 February 2021, an interest-free loan of USD75,000 repayable by 31 May 2021.[54]

29 On 23 March 2021, two companies managed/controlled by Dr Bai ("the AGF entities") entered into an Investment Agreement with CTX to invest up to USD15 million in CTX ("the AGF IA").[55] Asia Green Fund remitted the sums of USD1 million on 26 March 2021, and USD300,000 on 31 March 2021 to CTX as part of the investment sum under the AGF IA.[56]

30 On 16 April 2021, Asia Green Fund extended an interest-free loan of USD1.2 million to CTX ("the 16 April Loan Agreement"). The maturity date of the loan was 15 May 2021, and the loan of USD1.2 million was to form part of the USD15 million investment sum under the AGF IA.[57]

---

53 Wong's Defence and Counter-claim (Amendment No. 2) at paras 67–93.

54 Bai Bo's Defence (Amendment No. 2) at para 46.

55 Bai Bo's Defence (Amendment No. 2) at para 52.

56 Bai Bo's Defence (Amendment No. 2) at para 59.

57 Bai Bo's Defence (Amendment No. 2) at para 60.

31 Mr Kroll's position is that all of the above loans were part of an illicit scheme between the second to fourth defendants, whereby Dr Bai would take over the appearance of control of CTX from Mr Wong and Ms Hong, along with the risks posed by their improper conduct, in return for as close to 100% shareholding in CTX as possible.[58]

(5) Repurchase of Xiamen Anne's shares

32 It will be recalled that one of the CTX's shareholders was a company named Xiamen Anne. According to Mr Kroll, he was informed by Mr Wong and Ms Hong of the following matters by way of various WeChat conversations between 8 April and 20 April 2021: that CTX was "insolvent" and faced "cashflow difficulties"; that there was a "legacy problem" with Xiamen Anne which necessitated CT "clear[ing] the deck of shareholders in CTX by getting rid of all shareholdings including Mr Kroll's, failing which CTX would be shut down"; that Xiamen Anne was "facing problems with China's security regulators"; that CTX's potential investors had doubts about investing in CTX because of Xiamen Anne's regulatory issues; and that CTX "had no choice but to 'buy back' all of Xiamen Anne's shares" for its initial investment amount of SGD10 million[59]. Further, CTX had to resubmit its MAS application by the IPA deadline of 30 April 2021.[60] Mr Kroll was told by Mr Wong and Ms Hong that they had found an investor – Dr Bai Bo – who would inject cash into CTX.

---

58 Kroll's Reply to 3rd Defendant's Defence (Amendment No. 2) at para 29.

59 SOC (Amendment No. 1) at paras 63(a) - 63(d).

60 SOC (Amendment No. 1) at paras 63(f); Wong's Defence and Counter-claim (Amendment No. 2) at paras 189, 191, and 192.

33 CTX agreed to repurchase Xiamen Anne's 10% shareholding in CTX (580,645 shares) in 2 instalments payable on 31 March 2021 and 31 May 2021.[61]

34 According to Mr Kroll, on 15 April 2021, he was given two options by Ms Hong. The first was for CTX to buy back 3.24% of his 7.6% shareholding for EUR500,000 (which was less than his initial investment of EUR533,000), while the remaining 4.43% would be transferred to an "equity pool" (of which Mr Kroll was given no details). The second option was for Ms Hong personally to buy back Mr Kroll's entire 7.67% shareholding for SGD1.6 million. Mr Kroll was told that he had to relinquish his shareholding before Dr Bai would agree to inject funds into CTX. However, as he did not wish to exit CTX, he did not agree to either option.

30 April 2021 EGM

35 By way of an email dated 29 April 2021, a notice of an EGM of CTX to be held on 30 April 2021 ("30 April 2021 EGM") and a form of consent for shorter notice was circulated by Ms Chan to Mr Kroll, Mr Wong, Dr Bai, Mr Yang and Ms Hong as proxy for Xiamen Anne.[62] Mr Kroll claims that he did not consent to the shorter notice – but he did attend the meeting on 30 April 2021.[63]

36 At the 30 April 2021 EGM, the resolutions passed included, *inter alia*, the following:

---

61 Bai Bo's Defence (Amendment No. 2) at para 58.

62 Bai Bo's Defence (Amendment No. 2) at para 73.

63 SOC (Amendment No. 1) at paras 70–71.

(a) To issue and allot to Dr Bai 55,693,957 ordinary shares in CTX, the consideration for which was fully settled by offsetting the 1st, 2nd and 3rd CLAs;

(b) To appoint Dr Bai the CEO, Executive Director, and Chairman of the Board of CTX; and

(c) To "irrevocably and unconditionally" waive each of CTX's shareholders "pre-emptive rights", "rights of first refusal, right of co-sale, put or call rights, rights to require adjustments in conversion price for dilutive issuance, other rights of consent, and any other similar rights (as applicable) whether arising at contract or in law, and any notice period or requirement";[64] and that

(d) Dr Bai would provide personal guarantees as to CTX's other debt repayment obligations and indemnify the directors and existing shareholders of CTX against any liabilities out of the existing debts.[65]

37 As a result of the above event, Mr Kroll's shareholding was reduced from 7.67% to 0.72%.[66]

Events after the 30 April 2021 EGM

38 According to Mr Wong, CTX entered into an amended Restated Investment Agreement ("ARIA") on 9 May 2021 with the AGF entities to amend the AGF IA. Under the ARIA, the AGF entities confirmed investment of a full

64 SOC (Amendment No. 1) at para 79.

65 Bai Bo's Defence (Amendment No. 2) at para 87, Kroll's Reply to 3rd Defendant's Defence (Amendment No. 2) at para 87.

66 SOC (Amendment No. 1) at para 81.

USD15 million in CTX.[67] As with previous loan and/or investment agreements between CTX and Dr Bai or his entities (see above at [31]), Mr Kroll takes the position that the ARIA is part of an illicit scheme between the second to fourth defendants, whereby Dr Bai would take over the appearance of control of CTX from Mr Wong and Ms Hong, along with the risks posed by their improper conduct, in return for as close to 100% shareholding in CTX as possible.[68]

39 On or about 12 May 2021, an additional 5,125,934 shares were issued by CTX, causing Mr Kroll's shareholding to be further reduced from 0.72% to 0.67%.[69] Additional new shareholders connected to Dr Bai – the AGF entities – were reflected in CTX's ACRA records as holding a total of 7.69% of CTX's shares.[70]

40 On 17 May 2021, CTX obtained the CMS licence. On 16 July 2021, CTX was recognised as an RMO by MAS.[71]

41 Mr Kroll alleged that he had a tele-conversation with Mr Wong on 21 May 2021, during which the latter informed him that on or around 19 May 2021, Dr Bai and/or Asia Green Fund had invested a further USD12.5 million in CTX, based on a valuation of CTX at USD180 million ("the USD180 million valuation"). According to Mr Kroll, this was a far cry from the valuation of approximately USD458,266 reflected in the issuance of the 55,693,957 shares to

---

67 Wong's Defence and Counter-claim (Amendment No. 2) at para 145.

68 Kroll's Reply to 2nd Defendant's Defence and Defence to 2nd Defendant's Counterclaim (Amendment No. 2) at para 87.

69 SOC (Amendment No. 1) at para 87; Wong's Defence and Counter-claim (Amendment No. 2) at para 215.

70 SOC (Amendment No. 1) at para 88; Wong's Defence and Counter-claim (Amendment No. 2) at para 215.

71 Wong's Defence and Counter-claim (Amendment No. 2) at para 146.

Dr Bai at the 30 April EGM.[72] It should be noted that this valuation figure of USD458,266 came about because on Mr Kroll's version of events, at the 30 April EGM, the 55,693,957 shares were allotted to Dr Bai "in exchange for the loans to CTX under the 1st, 2nd and 3rd CLAs, which totalled only USD415,000"[73].

42 Mr Wong denies Mr Kroll's version of the tele-conversation. According to Mr Wong, during the tele-conversation, he had explained *inter alia* that Dr Bai had injected USD12.5 million into CTX *under the ARIA* which had contained a valuation benchmark re-stated at USD180 million (adjusted for the corresponding reduction of shares caused by the Xiamen Anne share buyback, which had been agreed to after the AGF IA was entered into).[74] Mr Wong's position is that the valuation of USD458,266 referred to by Mr Kroll was "nonsensical and misconceived" because the 55,693,957 shares were actually allotted to Dr Bai in exchange for the entirety of his financial assistance – which included the introduction of a new business opportunity, *viz* the Green Carbon Exchange – and not just for forgiving debts of USD415,000.[75]

Summary of Pleadings

Mr Kroll's Statement of Claim

43 Mr Kroll claims that he has been oppressed by Mr Wong, Dr Bai and Ms Hong conducting CTX's affairs in an oppressive, unfair, discriminatory and prejudicial manner in disregard of his minority shareholder interests. In

72 SOC (Amendment No. 1) at paras 92–93.

73 SOC (Amendment No. 1) at para 80(b).

74 Wong's Defence and Counter-claim (Amendment No. 2) at para 218.

75 Wong's Defence and Counter-claim (Amendment No. 2) at paras 140, 142 and 218.4.

particular, Mr Kroll claims that his shareholding in CTX was wrongfully and severely diluted from 7.67% as of 29 April 2021 to 0.67%[76] by way of:

(a) The resolutions passed at the 30 April 2021 EGM convened on only a day's notice which diluted his shareholding to 0.72%; and

(b) The 12 May 2021 issuance of additional CTX shares which diluted his shareholding to 0.67%.[77]

44 Mr Kroll claims that apart from CTX's Constitution, the other key written agreements and documents relating to his rights and obligations as a shareholder of CTX include the Subscription Agreement, Share Trust Agreement, Share Trust Termination Agreement and Deed for Transfer of Additional Shares.[78] He alleges that as a minority shareholder, he had the following legitimate expectations:

(a) His shareholding would not be diluted in a prejudicial or unfair manner, and that the affairs of CTX would be conducted by Relevant Directors and Majority Shareholders in accordance with the CA, CTX's Constitution, the key written agreements and documents relating to Mr Kroll's rights and obligations as a shareholder of CTX, and the law

(b) The Relevant Directors and Majority Shareholders would deal with him fairly as a minority shareholder.

---

76 SOC (Amendment No. 1) at para 1.

77 SOC (Amendment No. 1) at paras 2–3.

78 SOC (Amendment No. 1) at para 47.

(c) CTX and/or its directors were prohibited from "exercis[ing] any power of [CTX] to issue shares" "without the prior approval of" CTX in a "*general meeting*" (per s 161 CA);

(d) A meeting of CTX, "other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than 14 days or such longer period as is provided in [CTX's] constitution" (per s 177(2) CA); and

(e) A meeting of CTX that is not its annual general meeting, which is called by notice in writing of less than 14 days, is "deemed to be duly called if it is so agreed … by a majority in number of the members having a right to attend and vote thereat, being a majority which together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting" (per s 177(3)(b) CA).

(f) Under CTX's Constitution: Pursuant to Article 45(1), "subject to any direction to the contrary that may be given by [CTX] in [a] general meeting, all new shares must, before issue, be offered to all persons who, as at the date of the offer, are entitled to receive notices from the company of general meetings, in proportion, or as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled"; and

(g) Under CTX's Constitution: Pursuant to Article 49(1), "at least 14 days' notice … must be given to persons entitled to receive notices of general meetings from [CTX]".

(h) Under the Subscription Agreement: Pursuant to Clause 3.8, in the event CTX decides "to allocate and issue people or entities (either

consultants, advisors, employees etc.) option or shares of [CTX] against their services/work or others and not against investment consideration, within the period of 5 years following the Completion date of the [Subscription] Agreement" (i.e., 5 years after 31 March 2019, or until 30 March 2024), such allocation and issuance of options or shares "will not dilute in any way" Mr Kroll's holdings in CTX (see paragraph 23 herein); and

(i) Under the Subscription Agreement: Pursuant to Clause 10.1 of Schedule 3, CTX had warranted to "[conduct] its business in all material respects in accordance with all applicable laws".[79]

45 Mr Kroll has pleaded that Mr Wong, Ms Hong and Dr Bai breached these legitimate expectations, understandings and provisions as follows:[80]

(a) Sometime in May 2020, Mr Wong had forged Mr Kroll's signature on MAS Form 11 (Appointment of CEO or Director), which form was submitted by CTX to MAS in the course of its second licence application ("the MAS Form 11 Forgery Pleadings").[81]

(b) Mr Wong and/or Ms Hong caused CTX to enter into questionable contracts involving large sums of money which benefitted two companies linked to Ms Hong and another shareholder, Mr Yang ("Mr Yang"), namely Zeepson Technology Co., Ltd ("Zeepson") and Saibotan Beijing Co., Ltd ("Saibotan") ("the Zeepson and Saibotan pleadings").

---

79 SOC (Amendment No. 1) at paras 48–51.

80 SOC (Amendment No. 1) at para 52.

81 SOC (Amendment No. 1) para 55.

(c) Mr Wong and/or Ms Hong failed to cause CTX to promptly and accurately update ACRA and/or the MAS of the true and accurate shareholdings and directorships within CTX;

(d) Mr Wong, Ms Hong and Dr Bai contrived an illicit scheme to manipulate CTX's internal affairs so that CTX could maintain the appearance that Mr Wong held no more than 5% of CTX shares, thus avoiding the possibility that MAS would reject CTX's second licence application.[82]

(e) Mr Wong and Ms Hong pressured Mr Kroll to exit CTX at a low price.[83] Mr Wong, Ms Hong and Dr Bai did not give him any option that assured him that his shareholding in CTX would not be reduced or diluted, and there were no discussions about whether Mr Kroll could remain a 7.67% shareholder of CTX.[84] Mr Kroll also believes that the issuance of 55,693,957 shares to Dr Bai at the 30 April EGM was not based on the applicable contractual valuation and was designed to further this illicit scheme.[85]

(f) The 30 April EGM and the resolutions purportedly passed at the meeting were invalid. It did not meet the requirement of at least 14 days' notice under Art 49(1) of CTX's Constitutions and s 177(2) CA. Also, as Mr Kroll had not given his consent to short notice, CTX failed to obtain the requisite consent to short notice from not less than 95% of the total

---

82 SOC (Amendment No. 1) at para 61.

83 SOC (Amendment No. 1) at para 63

84 SOC (Amendment No. 1) at para 67.

85 SOC (Amendment No. 1) at para 93.

voting rights of all shareholders having a right to vote at the EGM, under s 177(3)(*b*) CA.[86]

(g) The 12 May 2021 issuance of shares was also invalid as it was in breach of s 161 CA. CTX failed to call a general meeting and pass the required resolutions to authorise the issuance of shares.[87]

46 Mr Kroll seeks the following reliefs:

(a) A declaration that the 30 April EGM and all resolutions passed thereat are invalid;

(b) An order that Mr Kroll's shareholding in CTX be restored to the percentage of shares that Mr Kroll held as at 29 April 2021 (7.67%), and that upon restoration, any of the Defendants shall purchase all of Mr Kroll's shares in CTX at a price to be determined by the Court, which price shall reflect (i) the value of Mr Kroll's shares as at the date of such order and also (ii) the value that Mr Kroll's shares would have had but for the Defendants' oppressive breaches, conducts, acts and/or omissions (having particular regard to the USD180 million valuation cited at paragraph 92 herein);

(c) As an alternative to the two prayers above, an order that CTX be wound up by the Court pursuant to section 216(2)(*f*) CA;

(d) Damages to be assessed and/or equitable compensation be paid to Mr Kroll;

---

86 SOC (Amendment No. 1) at paras 85–86.

87 SOC (Amendment No. 1) at paras 89–90.

(e) Costs; and

(f) Such further or other relief as this Honourable Court deems fit.

CTX's Defence

47 In its defence, the company CTX avers that the contracts with Zeepson and Saibotan are genuine contracts.[88] As Mr Kroll was only a shareholder and not a director of CTX at the time when the Zeepson and Saibotan contracts were concluded, Mr Kroll was not entitled to be informed of CTX's affairs and day-to-day operations.[89] While CTX acknowledges that ACRA was not immediately updated about certain changes to CTX's directorships, shareholders and their shareholdings, it denies that this was done to falsely reflect CTX's directorships, shareholders and shareholdings.[90] There was no illicit scheme to manipulate its internal affairs.[91] CTX avers that the 30 April 2021 EGM and the resolutions passed thereat are valid.[92] CTX also avers that s 161 CA imposes an obligation on company directors, and not the company itself, to obtain the prior approval of the company in general meeting before issuing new shares.[93]

Mr Wong's Defence and Counter-claim

48 Mr Wong claims that the 30 April 2021 EGM was called on urgent notice because of matters that shareholders had to resolve by the 30 April 2021 IPA deadline; that Mr Kroll was aware of the nature of the discussions; and that he

88 CTX's Defence at para 69.

89 CTX's Defence at para 71.

90 CTX's Defence at para 72.

91 SOC (Amendment No. 1) at para 73.

92 CTX's Defence at para 84.

93 CTX's Defence at para 86.

had agreed to participate in them.[94] The dilution of shares was uniform across all existing shareholdings and was in the best interest of all shareholders, as CTX was insolvent or doubtfully solvent at that stage and needed the financial rescue package that Dr Bai could bring.[95]

49 Mr Wong also claims that Mr Kroll's complaints were made as part of an opportunistic move to enrich himself personally. According to Mr Wong, this included pressuring Mr Wong to transfer additional shares to him without consideration. Mr Kroll had procured these shares by *inter alia* refusing to transfer back all of Mr Wong's shares which he had hitherto held in trust, and also by threatening to report to MAS various alleged misrepresentations which would have compromised CTX's ability to obtain the MAS licenses. While Mr Kroll had tried to rationalise the transfer of the additional shares as a revaluation of his initial investment sum, this went far beyond any such revaluation, as he also wanted more free shares to match the "sweat equity" allocated to a senior employee in February 2021 – and this despite promptly resigning as director at end-February 2021 without having provided any "sweat" for the additional free shares.[96] The additional shares transferred to Mr Kroll raised his legal and beneficial pre-EGM shareholding in CTX from 1.40% to 7.67%.

50 In his pleadings, Mr Wong also counterclaims for the vitiation of the unsealed Deed for the transfer of additional shares dated 11 February 2021 and the full return of the additional 364,369 shares (then 6.27% of CTX), on the basis of economic duress.[97] In the alternative, Mr Wong seeks specific performance by

---

94 Mr Wong's Defence and Counterclaim (Amendment No. 2) at para 5.

95 Mr Wong's Defence and Counterclaim (Amendment No. 2) at paras 6–7.

96 Mr Wong's Defence and Counterclaim (Amendment No. 2) at paras 9–10.

97 Mr Wong's Defence and Counterclaim (Amendment No. 2) at paras 12 and 225–232.

way of the transfer back to him of 257,240 such shares (then 4.43% of CTX) from Mr Kroll. According to Mr Wong, these additional shares were transferred to Mr Kroll on the basis that they constituted "sweat equity", and were subject to the condition subsequent that Mr Kroll would actively participate in and contribute towards the development of CTX's service offerings and the sourcing of additional funding and capital. Since Mr Kroll failed to do any of these things after receiving the shares, he became disentitled to these shares.[98] As a further alternative, even if there were an agreement between Mr Wong and Mr Kroll for the latter to receive the 257,240 "sweat equity" shares, Mr Wong says there was no consideration provided by Mr Kroll for any such alleged agreement.[99]

Dr Bai's Defence

51 Dr Bai's position is that he has been wrongfully dragged into this dispute by Mr Kroll as part of the latter's attempts to procure a buy-out of his CTX shareholding at a price beyond its reasonable value.[100] It is not disputed that Dr Bai did not vote at the 30 April 2021 EGM. Accordingly, Dr Bai asserts that it is an abuse of process by Mr Kroll to claim that Dr Bai bears any liability arising from resolutions passed at the EGM.[101] Dr Bai also denies any illicit scheme to manipulate CTX's internal affairs.[102]

52 As for the shareholding dilution approved at the 30 April 2021 EGM by a majority of shareholders, this affected all shareholders uniformly.[103] At the

98 Mr Wong's Defence and Counterclaim (Amendment No. 2) at paras 12 and 233–238.

99 Mr Wong's Defence and Counterclaim (Amendment No. 2) at para 236A and 238.

100 Bai Bo's Defence (Amendment No. 1) at para 4.

101 Bai Bo's Defence (Amendment No. 1) at para 5.

102 Bai Bo's Defence (Amendment No. 1) at para 122.

103 Bai Bo's Defence (Amendment No. 1) at para 6.

same time, Dr Bai and his companies took on 100% of CTX's business risk and up to around SGD15 million of financial liabilities. This arrangement was the only option that would have allowed CTX to meet MAS' requirements and to address its financial situation.[104] As for the short notice given in respect of the 30 April 2021 EGM, Dr Bai claims that the short notice was necessary due to the urgency arising from the IPA deadline, and that the omission to give 14 days' notice of the EGM was a mere procedural irregularity capable of re-validation by the court under s 392(4)(a) Companies Act.[105] No direct valuation was fixed for the shares issued to Dr Bai at was fixed at the 30 April 2021 EGM, nor can such a valuation be derived from the outcome of the EGM.[106]

53 In respect of the 12 May 2021 issuance of shares, Dr Bai alleges that this was done pursuant to the ARIA.[107] It was initially agreed and contemplated under the AGF IA in March 2021, pre-dating the 30 April 2021 EGM.[108]

54 In respect of the MAS Form 11 Forgery Pleadings, Dr Bai says he has no knowledge of matters pertaining to the allegedly forged signature.[109]

55 In respect of the Zeepson and Saibotan Pleadings, Dr Bai asserts that Mr Kroll's allegations are based on incomplete information. Seven contractual arrangements were entered into with Zeepson between April 2019 to January 2020 with a total contract value of RMB14,056,860, while the two contracts entered into with Saibotan between May to September 2019 had a total contract

---

104 Bai Bo's Defence (Amendment No. 1) at para 7.

105 Bai Bo's Defence (Amendment No. 1) at para 142.

106 Bai Bo's Defence (Amendment No. 1) at para 147.

107 Bai Bo's Defence (Amendment No. 1) at para 8.

108 Bai Bo's Defence (Amendment No. 1) at paras 143–144.

109 Bai Bo's Defence (Amendment No. 1) at para 112.

value of RMB 7,000,000.[110] To Dr Bai's understanding, the contracts were to develop platform and security services from which CTX's exchanges would operate and which would form the backbone of its commercial operations.[111] Dr Bai further points out that the contracts were entered into between April 2019 to January 2020, when Mr Kroll was only a shareholder: it is unclear, therefore, on what basis Mr Kroll derives an expectation to be informed of transactions relating to CTX's operations.[112]

Ms Hong's Defence

56 Ms Hong claims that she has never participated in any registration of CTX shareholdings on ACRA and that she does not know how accurate ACRA records of legal shareholding may give rise to a "false impression".[113]

57 According to Ms Hong, Mr Kroll was upset about a late 2020 sale of CTX shares by Mr Wong at a valuation of SGD25 million valuation, because he (Mr Kroll) had purchased his shares at a higher valuation in March 2019. It was proposed to Mr Kroll on 18 January 2021 that his initial investment be revalued so as to give him a 3.24% stake instead of 1.4%.[114] Mr Kroll was still not satisfied. On 24 January 2021, Mr Wong proposed raising Mr Kroll's shareholding to around 5% and provided paperwork to Mr Kroll to reflect this. Mr Kroll responded with amendments from his lawyer on 2 February 2021, which Mr Wong agreed to on 3 February 2021.[115]

---

110 Bai Bo's Defence (Amendment No. 1) at paras 114–116.

111 Bai Bo's Defence (Amendment No. 1) at paras 116.3 and 119.

112 Bai Bo's Defence (Amendment No. 1) at para 119.

113 Ms Hong's Defence (Amendment No. 1) at paras 41–21.

114 Ms Hong's Defence (Amendment No. 1) at para 55.

115 Ms Hong's Defence (Amendment No. 1) at para 57.

58 Later, on 3 February 2021, Mr Kroll suddenly declared that he wanted his 1.4% shareholding sold at the initial investment sum of EUR533,000, and to retain the same quantity of shares as Mr Yang,[116] who had 4.43% shares registered to him as "sweat equity".[117] Mr Kroll wanted to sell his 1.4% shares to Dr Bai but Dr Bai was not keen.[118]

59 On 10 February 2021, Mr Wong asked Mr Kroll for the signed paperwork. At that point, Mr Kroll came up with a new position which involved combining family shares with his shares to match Mr Yang's shareholding.[119] Ms Hong explained to Mr Kroll that Mr Yang's shares were from an equity pool (for shares meant to be held as "sweat equity") and that Mr Kroll should consider joining the existing equity pool instead.[120] The discussion then ceased on WeChat. Mr Wong subsequently came up with amendments to the paperwork aimed at restoring the trust shares originally due to Mr Wong.[121]

60 In the end, however, Mr Wong gave in to the pressure from Mr Kroll; and the Deed for the transfer of additional shares as well as the Trust Termination Agreement were executed. Under the Deed for the transfer of additional shares, Mr Wong agreed to transfer beneficial ownership of 364,369 shares to Mr Kroll as a "supplement" intended to achieve the re-valuation of Mr Kroll's initial investment. Under the Trust Termination Agreement, because of the additional shares given to Mr Kroll by virtue of the Deed for Transfer of Additional Shares,

---

116 Ms Hong's Defence (Amendment No. 1) at para 86.

117 Ms Hong's Defence (Amendment No. 1) at paras 58–59.

118 Ms Hong's Defence (Amendment No. 1) at para 60.

119 Ms Hong's Defence (Amendment No. 1) at para 61.

120 Ms Hong's Defence (Amendment No. 1) at para 62.

121 Ms Hong's Defence (Amendment No. 1) at para 63.

Mr Kroll would only transfer 2,731,907 Trust Shares back to Mr Wong, instead of all 3,096,276 Trust Shares.[122]

61 Ms Hong alleges that the increase in Mr Kroll's shareholding from 1.4% to 7.67%, pursuant to the terms of the Trust Termination Agreement and the Deed for transfer of additional shares, was not based on re-valuation, which could only have furnished an uplift from 1.4% to 3.24%. What happened instead was a revaluation *and* an addition of a further 4.43% (matching what Mr Yang was holding for the equity pool), all coming from Mr Wong's shares and none of which Mr Kroll paid for. This was unfair to Mr Wong who had succumbed to Mr Kroll's pressure tactics.[123] In relation to the 4.43% shareholding given to Mr Kroll, Mr Kroll was intended to earn the "sweat equity", but instead, he tendered his resignation shortly thereafter on 22 February 2021 and did not provide any genuine assistance to CTX in its efforts to seek investment and/or financing.[124]

62 In respect of CTX's contracts with Zeepson (of which Ms Hong is the founder, CEO and majority shareholder), seven contracts were entered into by CTX and Zeepson for software development work to develop the platform and security services from which CTX's exchanges would operate. According to Ms Hong, Zeepson had offered CTX a preferential rate and had not obtained any improper benefit.[125]

---

122 Ms Hong's Defence (Amendment No. 1) at paras 65–67

123 Ms Hong's Defence (Amendment No. 1) at para 68.

124 Ms Hong's Defence (Amendment No. 1) at paras 69–70.

125 Ms Hong's Defence (Amendment No. 1) at paras 86–89.

63 In respect of the 30 April 2021 EGM, Ms Hong asserts that she knows nothing of the amendments made to CTX's ACRA records on 29 April 2021.[126] Her position is that notwithstanding the share dilution, the resolutions passed at the EGM were in the best interest of CTX and all existing shareholders, as these resolutions brought about an arrangement which resolved all of CTX's issues.[127] Ms Hong also asserts that all of CTX's affairs (including the passing of shareholder resolutions at the 30 April 2021 EGM) were conducted in a manner that satisfied the requirements of commercial fairness.[128] It was Mr Kroll who persisted in the wholly misconceived allegation post 30 April 2021 that Dr Bai had been allocated a substantial shareholding simply for forgiving USD415,000 in loans.[129]

64 In respect of the 12 May 2021 issuance of shares, Ms Hong claims that to the best of her knowledge, this was in line with the resolutions passed at the 30 April 2021 EGM which approved Dr Bai's rescue package; and that Dr Bai had in fact injected a further USD12.5 million into CTX not long after the EGM.

HC/SUM 1507/2022: The striking-out application

65 The second to fourth defendants have applied for the SOC to be struck out entirely ("Prayer 1"); alternatively, for paragraphs 57 to 59 of the pleadings (which relate to the Zeepson and Saibotan contracts, "Prayer 2") and paragraphs 55 to 56 of the pleadings (which relate to the alleged forgery of MAS Form 11, "Prayer 3") to be struck out.[130]

---

126 Ms Hong's Defence (Amendment No. 1) at para 111.

127 Ms Hong's Defence (Amendment No. 1) at para 129.

128 Ms Hong's Defence (Amendment No. 1) at para 34.

129 Ms Hong's Defence (Amendment No. 1) at paras 146–147.

130 Summons HC/SUM 1507/2022 filed 18 April 2022.

66 The grounds of the application are stated to be as follows:

(a) Prayer 1 is premised on the Plaintiff having rejected a "reasonable offer" for buyout by independent third-party assessment, therefore amounting to an abuse of process. Prayer 1 is sought pursuant to O 18 r 19(1)(*d*) ROC 2014 and/or pursuant to the Court's inherent jurisdiction/powers (as may be applicable and/or pursuant to O 92 r 4 ROC 2014).

(b) Prayer 2 is premised on the Plaintiff having pleaded to a matter on which the express/implied allegation of "overpayment" is factually unsupportable, and, in any event, the allegation even if true (which is denied) is a "corporate wrong" and not a "personal wrong". Prayer 2 is sought pursuant to O 18 r 19 (1)(*a*), (*b*), (*c*) and/or (*d*) ROC 2014 and/or pursuant to the Court's inherent jurisdiction/powers (as may be applicable and/or pursuant to O 92 r 4 ROC 2014).

(c) Prayer 3 is premised on the Plaintiff having pleaded to a matter on which the allegation even if true (which is denied) is a "corporate wrong" and not a "personal wrong". Prayer 2 is sought pursuant to O 18 r 19(1)(*a*), (*b*), (*c*) and/or (*d*) ROC 2014 and/or pursuant to the Court's inherent jurisdiction/powers (as may be applicable and/or pursuant to O 92 r 4 ROC 2014)

The law relating to Order 18 r 19 applications

67 It is not disputed that the power granted to the court under O 18 r 19 is a draconian one (*Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and*

others [1997] 3 SLR(R) 649 ("*Gabriel Peter*")[131] at [39]; *Harun bin Syed Hussain Aljunied and another v Abdul Samad bin O K Mohamed Haniffa and others* [2017] SGHC 248 ("*Harun*") at [28]), which peremptorily prevents plaintiffs from even going to trial to attempt to prove their case (*Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*")[132] at [36]; *Harun* at [28].) The threshold for striking out is therefore a high one: the court will exercise its power to strike out where it is plain and obvious that the plaintiff does not have a cause of action (*Trinity Construction Development Pte Ltd v Sinohydro Corp Ltd (Singapore Branch)* [2021] 3 SLR 1039 ("*Trinity Construction*") at [12]; *Chee Siok Chin* at [36]; *Singapore Civil Procedure 2021 (Volume 1)* (Sweet & Maxwell, 2021) ("*Singapore Civil Procedure*") at 18/19/6).

68 The first ground for striking out applies if the pleading discloses no reasonable cause of action: O 18 r 19(1)(*a*). This is a strict requirement. The pleading itself must fail to make out a reasonable cause of action without reference to other evidence: *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 ("*Ng Chee Weng*") at [112].

69 The second ground for striking out applies where the pleading is scandalous, frivolous or vexatious: O 18 r 19(1)(*b*). The terms "frivolous" and "vexatious" have been judicially interpreted to connote obvious unsustainability (*Chee Siok Chin* at [37]). This can be found in two ways – firstly, if the claim is legally unsustainable in the sense that the plaintiff would not succeed in getting the relief he seeks even if all the facts he alleges are successfully proven, and

---

131 Plaintiff's List of Authorities ("PLOA") at Tab 5; Defendants' List of Authorities ("DLOA") at Tab 11.

132 PLOA at Tab 4; DLOA at Tab 9.

secondly, if the claim is factually unsustainable such that the claim is fanciful and without substance, for example where the statement of facts is contradicted by all the documents or materials on which it is based (*The "Bunga Melati 5"* [2012] 4 SLR 546[133] ("*Bunga Melati*") at [39]; *Harun* at [30]).

70 As for the "scandalous" limb, the question is whether the allegedly scandalous matter had a tendency to show the truth of any allegation that is material to the relief sought: *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565 ("*Lai Swee Lin Linda*") at [67] citing *Christie v Christie* (1872-1873) LR 8 Ch App 499 at p 503. If any unnecessary matter in a pleading contains any imputation on the opponent or makes any charge of misconduct or bad faith against him or anyone else, it will be struck out for being scandalous (*Singapore Civil Procedure* at 18/19/11).

71 The third ground for striking out applies where the pleading may prejudice, embarrass or delay the fair trial of the action: O 18 r 19(1)(*c*). In *Tong Seak Kan and anor v Jaya Sudhir a/l Jayaram* [2016] 5 SLR 887, for example, an appeal was brought against the AR's decision to strike out portions of the defence which alleged harassment on the plaintiff's part. The High Court held on appeal (at [47]) that the AR's decision to strike out was justifiable on the basis of O 18 r 19(*c*) of the Rules of Court, as these allegations would "needlessly broaden the scope of evidence required at trial so as to cause delay and costs".

72 The fourth ground for striking out applies if the pleading is otherwise an abuse of the process of the Court: O 18 r 19(1)(*d*). This is the widest general ground for striking out and includes considerations of public policy and the

---

133 PLOA at Tab 12; DLOA at Tab 36.

interests of justice (*Gabriel Peter* at [22]; *Chee Siok Chin* at [34]). This ground can be organised into four categories (*Chee Siok Chin* at [34]):

(a) proceedings which involve a deception on the court, or are fictitious or constitute a mere sham;

(b) proceedings where the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way;

(c) proceedings which are manifestly groundless or without foundation or serve no useful purpose;

(d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.

A prime example of pleadings which offend O 18 r 19(1)(*d*) would be the bringing of a claim for collateral purposes (*Harun* at [78]).

73 While the second, third and fourth Defendants purport on the face of their summons to rely on every limb under O 18 r 19, their counsel made it clear at the hearing that the "heart of the matter" was really the open offer (without admission of liability) which they had made to Mr Kroll on 14 March 2022. The second, third and fourth Defendants submit that their offer "essentially delivers everything that [Mr Kroll] is seeking in the suit", such that the continued prosecution of the action serves no useful purpose; and that Mr Kroll's failure to accept their offer – and his insistence on continuing with the proceedings – amount to an abuse of the process of court which warrants his action being struck out.

Issues before this court

74 In respect of the striking out application in Summons 1507, the following issues are to be considered:

(a) For Prayer 1: Whether the refusal of the Buyout Offer and Mr Kroll's continued prosecution of this action constitute an abuse of process;

(b) For Prayer 2: Whether the Zeepson and Saibotan Pleadings are factually and/or legally unsustainable, and whether the pleadings disclose, at most, a corporate wrong;

(c) For Prayer 3: Whether the MAS Form 11 Forgery Pleadings are factually and/or legally unsustainable, and whether the pleadings disclose, at most, a corporate wrong; and

(d) For both Prayers 2 and 3: Whether the ground under Order 18 r 19(b) is made out for the striking-out of either pleading.

Prayer 1: On striking out the entire pleading

The parties' cases

The Buyout Offer of 14 March 2022

75 I will first deal with the second, third and fourth Defendants' attempt in prayer 1 to strike out the entire Statement of Claim.

76 On 14 March 2022, the second, third and fourth Defendants issued an open letter containing two proposals to purchase Mr Kroll's registered CTX

shares.[134] Under the main proposal ("the Buyout Offer"), the notional percentage of Mr Kroll's CTX shares is fixed at 7.67%. The quantum of the purchase price is derived using a formula of this percentage of shares multiplied by the "Company Value". The "Company Value" would be determined by an Assessor, excluding matters deriving from the 30 April 2021 EGM that formed the consideration for the issuance of shares (which matters Mr Kroll has characterised as unfair dilution events). The date of valuation is the date of the impugned EGM – *ie* 30 April 2021. The buy-out value is purely *pro rata*, with no "loss of marketability" discount on account of a minority shareholding stake. The Assessor is to be jointly appointed within a reasonable time of acceptance of the proposal (to be agreed) and should have a minimal qualification of 10 years in the field of forensic accounting with experience in company valuations as an expert in Court or arbitration proceedings. The cost of the Assessor and Assessment process should be borne equally by each side, and the parties should bear their own legal costs.[135]

77 The alternative proposal in the second, third and fourth Defendants' letter was for Mr Kroll's registered shareholding of 0.67% to be bought out at the notional company valuation of USD180 million.[136]

78 The 14 March 2022 letter requested a response by 18 March 2022 but no formal response was received by that date from Mr Kroll's solicitors.[137] On 19 March 2022, Mr Kroll sent Dr Bai an email stating that "I'm not selling for less than $30,680,000" and "After what you have put me through if you thought I

---

134 Dr Bai Bo's affidavit filed 18 April 2022 at para 23 and BB-1 Tab 39 at p 277.

135 Bai Bo's affidavit filed 18 April 2022 at BB-1 Tab 39 pp 277–283.

136 Dr Bai Bo's affidavit filed 18 April 2022 at para 28; Tab 39 p 282.

137 Dr Bai Bo's affidavit filed 18 April 2022 at paras 29–30.

would agree to a cent less than $13.8M you don't understand the situation".[138] Mr Kroll's formal rejection of the buyout proposal was issued through his solicitors ("WongPartnership") on 22 March 2022.[139] The same letter stated that "our client remains open to considering genuine and serious proposals" and that:

> Should your clients: (i) make an offer that is consistent with the valuations they themselves accepted at the time Mr Bai Bo made his post 30 April 2021 EGM investment, and higher than the last offer they made in the second round of without prejudice settlement correspondence/discussions; (ii) obtain the Company's agreement to be involved in and bound by any settlement reached… our client remains prepared to consider settlement.[140]

79 The second, third and fourth Defendants sought clarifications on this counter-proposal by way of a letter to WongPartnership on 29 March 2022 and requested a response by 1 April 2022. No response was provided by that date.[141] Instead, on 4 April 2022, WongPartnership issued a holding response stating that instructions would be sought.[142] On 14 April 2022, WongPartnership issued a substantive response as follows:[143]

> Our client notes that your open letter dated 29 March 2022 contains no offer, nor does it satisfy any of the stipulations at paragraph 8 of our open letter dated 23 March 2022, which our client plainly requested be met before he considers any settlement at this stage of the dispute.
>
> While our client remains amenable to engage your clients in settlement discussions, any meaningful discussions on settlement simply cannot proceed on your clients' proposed "maximum flexibility" basis, which is fraught with uncertainty.

---

138 Dr Bai Bo's affidavit filed 18 April 2022 at para 31, BB-1 Tab 17 at p 138, Tab 40 p 285.

139 Dr Bai Bo's affidavit filed 18 April 2022 at para 33, BB-1 Tab 41 at p 287.

140 Dr Bai Bo's affidavit filed 18 April 2022 at para 33, BB-1 Tab 41 at p 288.

141 Dr Bai Bo's affidavit filed 18 April 2022 at paras 44–48, BB-1 Tab 47 at p 323.

142 Dr Bai Bo's affidavit filed 18 April 2022 at para 49, BB-1 Tab 50 at p 335.

143 Dr Bai Bo's affidavit filed 18 April 2022 at para 51, BB-1 Tab 56 at p 394.

> Our client does not intend to engage your clients on this issue further until after discovery, as it is only logical and sensible to consider the proposed settlement mechanism set out at paragraphs 13 to 22 of your letter dated 14 March 2022, after the documents relevant to the company's valuation/assessment have been disclosed. In relation to paragraphs 23 to 25 of your letter dated 14 March 2022, our client agrees to the appointment of a joint assessor in the first instance, save that our client reserves his position as to the appointment of an independent assessor in the event parties are unable to agree to a joint assessor.

Dr Bai's Affidavit in support of SUM 1507

80 In an affidavit filed in support of the striking-out application, Dr Bai suggest that Mr Kroll is using the proceedings as leverage to extort a high buy-out price, by threatening and/or seeking to embarrass or scandalise the second to fourth Defendants.[144] Dr Bai highlights the following matters which he says support his view. On 8 November 2021, Mr Kroll filed a generally-endorsed Writ of Summons without an SOC: the second to fourth Defendants contend that he did so as a "scare tactic", to show he was prepared to go to court and to broadcast his accusations. The second to fourth Defendants take the view that Mr Kroll did not file a SOC when he filed the writ because had he done so, his allegations would be revealed in publicly accessible pleadings and the threat would be spent.[145] Also, Mr Kroll was unable to file the SOC on time.[146]

81 On 16 November 2021, after the second to fourth Defendants had filed their Memorandum of Appearance for Suit 915, the Plaintiff's solicitors, WongPartnership, issued a letter to their solicitors, Salem Ibrahim LLC, stating that:[147]

---

144 Dr Bai Bo's affidavit filed 18 April 2022 at para 55.

145 Dr Bai Bo's affidavit filed 18 April 2022 at paras 65–68.

146 Dr Bai Bo's affidavit filed 18 April 2022 at paras 73–74.

147 Dr Bai Bo's affidavit filed 18 April 2022 at para 70, BB-1 Tab 28 at p 193.

> … to date, the Writ has only been physically served on the 1st Defendant, CTX, via service on its [then solicitors], Breakpoint LLC. That your clients have chosen to enter an appearance in the Suit without even first requesting service of or being served the Writ, is consistent with the position that they simply do not see themselves as separate and distinct from CTX, and that they are in fact the directing minds and wills of CTX.

Dr Bai states that since Ms Hong is resident overseas and he himself was away from Singapore at that time, Mr Kroll would have needed to expend time and costs in applying for leave to serve the Writ out of jurisdiction or for substituted service, and that Mr Kroll clearly made the complaint in the 16 November 2021 letter because he did not wish to proceed with the suit.[148]

82 Dr Bai also highlights that as early as 3 August 2021, CTX had already offered Mr Kroll the documents he seeks in his SOC[149]. However, Mr Kroll failed to give the undertaking requested by CTX (that he would not provide these documents to third parties); and Mr Kroll also failed to respond when CTX tried to follow up on the matter.[150]

83 Lastly, the position taken in WongPartnership's correspondence – that there be no further discussions before the discovery stage – is said by the second to fourth Defendants to be proof of "further gamesmanship by Mr Kroll". According to the second, third and fourth Defendants, Mr Kroll is hoping that the discovery process will throw up "scandal" so that he can "extort from the Defendants a buy-out price closer to the $30.6 million he mostly [*sic*] recently demanded."[151]

---

148 Dr Bai Bo's affidavit filed 18 April 2022 at paras 71–72.

149 SOC (Amendment No. 1) at paras 64 and 78.

150 Dr Bai Bo's affidavit filed 18 April 2022 at paras 75–76.

151 Dr Bai Bo's affidavit filed 18 April 2022 at paras 80–84.

84 Dr Bai Bo also draws attention to CTX's "exceptionally modest revenue generation"[152], which he contrasts with Mr Kroll's alleged status as the "wealthiest shareholder of CTX":[153] according to Dr Bai, "it is absurd that [Mr Kroll] is making such crazy requests for buy-outs without any logic, and without even being willing to help out CTX in its time of need."[154]

Mr Kroll's Reply Affidavit of 9 May 2022 & the submissions made on his behalf

85 In his reply affidavit, Mr Kroll contends that the Buyout Offer was not reasonable because any valuation to be obtained from the pegging of the offer to an elusive "Company Value" would be lower than the valuation of USD180 million offered to Dr Bai after CTX obtained its licences in May 2021.[155] In their submissions, Mr Kroll's counsel elaborated further on this contention: according to counsel, pegging the Buyout Offer to an elusive "Company Value" creates uncertainty and is inappropriate when applied to a start-up like CTX, as this pre-dates the grant of CTX's licences.[156]

86 In his reply affidavit, Mr Kroll also contends that the allotment of shares to Dr Bai at the 30 April 2021 EGM is a fundamental issue of dispute which affects the share valuation and which has resulted in unfair shareholding dilution.[157] In fact, according to Mr Kroll, the Buyout Offer will not adequately address and/or meet all reliefs sought by him because:

---

152 Dr Bai Bo's affidavit filed 18 April 2022 at para 88

153 Dr Bai Bo's affidavit filed 18 April 2022 at para 92.

154 Dr Bai Bo's affidavit filed 18 April 2022 at para 94.

155 Daniel Kroll's affidavit filed 9 May 2022 at para 37.

156 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 61(a).

157 Daniel Kroll's affidavit filed 9 May 2022 at para 39.

(a) Without the Court's directions, an independent valuer will not be able to adequately assess the valuation of shares "but for the Defendants' oppressive breaches, conducts, acts and/or omissions";

(b) There are relevant matters pre-dating the proposed date of valuation (30 April 2021); and

(c) The second to fourth Defendants' proposal ignores past oppressive acts, which will be captured in Mr Kroll's claims for damages and/or equitable compensation.[158]

87 As for the Alternative Buyout Offer, Mr Kroll argues that this was not reasonable as it was similar to a previous offer made by Ms Hong, prior to the 30 April 2021 EGM and the dilution of his shareholding at that EGM.[159]

88 In any event, Mr Kroll contends that it is only logical and sensible to consider a fair valuation procedure after the documents relevant to the company's valuation have been disclosed and the merits litigated.[160] In oral submissions, counsel for Mr Kroll explained that there was insufficient information for his client to meaningfully consider the offer; and that his client would only be able to do so after the discovery process had been completed, and after documents relevant to the company's valuation or assessment[161] - such as those relating to the contract with Xiamen Anne - had been disclosed.[162]

---

158 Daniel Kroll's affidavit filed 9 May 2022 at paras 41–42.

159 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 61(c).

160 Daniel Kroll's affidavit filed 9 May 2022 at para 38.

161 Daniel Kroll's affidavit filed 9 May 2022 at para 47.

162 Transcript 5 July 2022 at pp 77 – 78 and p 79 at lines 14 – 22.

89 According to Mr Kroll, he has in good faith sought to engage in without-prejudice settlement in his correspondence with the second to fourth Defendants.[163] The statements in his emails that he seeks a buyout of USD30.68 million and /or a buyout of USD13.8 million correspond to Ms Hong's projection of the next round of valuation and to Relief (2) of his Statement of Claim respectively – a fair value on par with what was presented to Dr Bai and/or conveyed by Ms Hong.[164] Mr Kroll has not shut down all attempts to negotiate: indeed, he invited the defendants to counter-propose since their Open Letter was fraught with uncertainty. He is amenable to the appointment of a joint assessor, save that he reserves his rights to the appointment of an independent assessor in the event that parties are unable to assess to a joint assessor.[165]

90 Mr Kroll asserts that he has no ulterior or improper purpose.[166] The allegation that Suit 915 is being used to generate scandal so as to "pressure and extort cash from the Defendants" is a speculative and sweeping one.[167] Applying the test in *Chee Siok Chin* at [34], he has a legitimate basis in mounting a claim in minority oppression; he has in good faith sought to engage in without-prejudice settlement discussions; and his action in Suit 915 does not constitute "multiple or successive proceedings which cause or are likely to cause improper vexation or oppression".[168]

---

163 Daniel Kroll's affidavit filed 9 May 2022 at para 45.

164 Daniel Kroll's affidavit filed 9 May 2022 at para 46.

165 Daniel Kroll's affidavit filed 9 May 2022 at para 48.

166 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 62.

167 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 63.

168 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 64.

Dr Bai Bo's Reply Affidavit of 30 May 2022 & the submissions made on behalf of the second to fourth defendants

91 In response, the second to fourth Defendants argue that Mr Kroll's position appears to be that an assessment process "would not be appropriate unless (1) it is by an assessor of his choosing and (2) he knows, ahead of the assessment process, what the final valuation of his share would be"[169] – conditions which the second to fourth Defendants reject as they create bias in Mr Kroll's favour.[170]

92 In oral submissions, counsel for the second to fourth Defendants highlighted the salient terms of the buyout offer, the main aim of which was to "immediately avoid further wasted time and agree for a buy-out of [Mr Kroll]'s registered 445,369 shares at a fair value to be determined by an assessor".[171] The Buyout Offer stipulates that a pro-rata method will be used to value the shares (*ie*, that the value of shares will be determined by using a percentage of shares multiplied by the company value). In computing this figure, Mr Kroll's shareholding will be fixed at the pre-dilution level of 7.67%.

93 As for the "Company Value", counsel for the second to fourth Defendants noted this was to be determined by the assessor, who would exclude, from the valuation, the alleged oppressive breaches, conduct, acts and/or omissions. Here, the assessor would take into account two factors in determining the company's value: the date of valuation, and the factors to input towards a valuation.[172] The valuation date would be fixed at 30 April 2021, which was the

169 Bai Bo's affidavit filed 30 May 2022 at para 9.

170 Bai Bo's affidavit filed 30 May 2022 at paras 10–16.

171 Dr Bai Bo's affidavit filed 18 April 2022 at p 278.

172 Dr Bai Bo's affidavit filed 18 April 2022 at p 279.

date of the EGM. 30 April 2021 was proposed as the valuation date since Mr Kroll himself claimed that it was the 30 April 2021 EGM which had resulted in his shares being diluted. What this implies is that a fair valuation of Mr Kroll's shares should not take into account the events of the EGM which resulted in the share dilution.

94 While Mr Kroll complains that the allotment of shares to Dr Bai is a fundamental issue of dispute, this does not render the Buyout Offer unreasonable since its starting point is that any buyout will be premised on a shareholding percentage in Mr Kroll's favour, *ie*, 7.67%.[173] Further, in respect of Mr Kroll's complaint that the Buyout Offer excludes the USD180 million valuation of CTX, the second to fourth Defendants contend that this is not viable, given that the USD180 million valuation was extracted from the ARIA, which is itself a direct consequence of the 30 April 2021 resolutions impugned by Mr Kroll.[174] In any event, the second to fourth Defendants argue that the USD180 million figure is not excluded from the assessor's consideration.[175] As for Mr Kroll's complaint that the Buyout Offer fails to consider his claim for damages and/or equitable compensation, the Buyout Offer already incorporates an invitation for parties to propose any matters that would impact the value of CTX as at 30 April 2021 ("post-value adjustments").[176]

95 In respect of Mr Kroll's complaint that fair value can only be determined with the benefit of discovery and trial, the second to fourth Defendants submit that Mr Kroll has actually been offered the opportunity to receive the documents

---

173 Defendants' Written Submissions for HC/SUM 1507/2022 at paras 153–154.

174 Defendants' Written Submissions for HC/SUM 1507/2022 at paras 155–157.

175 Defendants' Written Submissions for HC/SUM 1507/2022 at para 158.

176 Defendants' Written Submissions for HC/SUM 1507/2022 at paras 159–162.

on numerous previous occasions.[177] In any event, the Buyout Offer provided for an equality of arms: as noted earlier, parties are free to make submissions to the Assessor on matters which they think would affect the value of the shares;[178] and if Mr Kroll wishes to see any documents before accepting the Buyout Offer, the second to fourth Defendants say they are open to offering the documents.[179]

The framework proposed by the second to fourth Defendants for the consideration of their striking-out application

96 The second to fourth Defendants have made it clear from the outset that their striking-out application is premised on Mr Kroll's failure to accept their Buyout Offer. Insofar as the law is concerned, the second to fourth Defendants propose that I apply the following 3-stage framework to determine whether Mr Kroll's action should be struck out:[180]

> Stage 1: Is the offer presented a "reasonable offer" insofar as there is observance of Lord Hoffman's guidelines in *O'Neill v Phillips*?
>
> Stage 2: If the *O'Neill v Phillips* guidelines are met, are there *other* factors which prevent the offer from providing the petitioner with

177 Defendants' Written Submissions for HC/SUM 1507/2022 at para 139.

178 Defendants' Written Submissions for HC/SUM 1507/2022 at para 146.

179 Defendants' Written Submissions for HC/SUM 1507/2022 at paras 137–138.

180 2nd to 4th defendants' written submissions dated 3 June 2022 at para 74.

> all the relief he may reasonably expect to obtain in the proceedings? Such non-exhaustive factors *could* include:
>
> > (a) Whether a pleaded and sustainable claim by the petitioner improperly omitted/not addressed by the offer.
> >
> > (b) Whether any matters exist for determination which only the Court is able to resolve.
> >
> > (c) Whether the petition can reasonably appreciate the fairness of the offer.
> >
> > (d) Whether the offeror is able to implement the offer.
>
> Stage 3: Is the Court able to utilize its tools and procedures to *resolve* any impediment to the petitioner's acceptance of the offer, to avoid wasted time, costs and judicial resources by a full trial?

O'Neill v Phillips

97 In *O'Neill v Phillips* [1999] 1 WLR 1092 ("*O'Neill*"), which the second to fourth Defendants rely on, Lord Hoffmann laid down the following requirements to determine what constitutes a reasonable offer.

> **In the first place, the offer must be to purchase the shares at a fair value.** This will ordinarily be a value representing an equivalent proportion of the total issued share capital, that is, without a discount for its being a minority holding. The Law Commission (paragraphs 3.57-62) has recommended a statutory presumption that in cases to which the presumption of unfairly prejudicial conduct applies, the fair value of the shares should be determined on a pro rata basis. This too reflects the existing practice. This is not to say that there may not be cases in which it will be fair to take a discounted value. But such cases will be based upon special circumstances and it will seldom be possible for the court to say that an offer to buy on a discounted basis is plainly reasonable, so that the petition should be struck out.
>
> **Secondly, the value, if not agreed, should be determined by a competent expert.** The offer in this case to appoint an accountant agreed by the parties or in default nominated by the President of the Institute of Chartered Accountants satisfied this requirement. One would ordinarily expect the costs of the expert to be shared but he should have the power to decide that they should be borne in some different way.

> **Thirdly, the offer should be to have the value determined by the expert as an expert.** I do not think that the offer should provide for the full machinery of arbitration or the half-way house of an expert who gives reasons. The objective should be economy and expedition, even if this carries the possibility of a rough edge for one side or the other (and both parties in this respect take the same risk) compared with a more elaborate procedure. This is in accordance with the terms of the draft Regulation 119: Exit Right recommended by the Law Commission: see Appendix C to the report, p. 133.
>
> **Fourthly, the offer should, as in this case, provide for equality of arms between the parties.** Both should have the same right of access to information about the company which bears upon the value of the shares and both should have the right to make submissions to the expert, though the form (written or oral) which these submissions may take should be left to the discretion of the expert himself.
>
> **Fifthly, there is the question of costs.** In the present case, when the offer was made after nearly three years of litigation, it could not serve as an independent ground for dismissing the petition, on the assumption that it was otherwise well founded, without an offer of costs. But this does not mean that payment of costs need always be offered. If there is a breakdown in relations between the parties, the majority shareholder should be given a reasonable opportunity to make an offer (which may include time to explore the question of how to raise finance) before he becomes obliged to pay costs. As I have said, the unfairness does not usually consist merely in the fact of the breakdown but in failure to make a suitable offer. And the majority shareholder should have a reasonable time to make the offer before his conduct is treated as unfair. The mere fact that the petitioner has presented his petition before the offer does not mean that the respondent must offer to pay the costs if he was not given a reasonable time.
>
> [emphasis in bold]

98 Applying their proposed 3-stage framework, the second to fourth Defendants submit that first, the Buyout Offer satisfies the *O'Neill* guidelines.[181] Second, the second to fourth Defendants submit that the *O'Neill* guidelines having been met, there are no other factors which prevent the Buyout Offer from giving Mr Kroll all the reliefs he can reasonably expect to obtain in the

---

181 Defendants' Written Submissions for HC/SUM 1507/2022 at paras 100–115.

proceedings; and Mr Kroll's reasons for rejecting the offer lack merit. Third, the second to fourth Defendants take the position that in the worst-case scenario, the court is in a position to utilize its tools and procedures to resolve any impediments to Mr Kroll's acceptance of the offer.

The law on the rejection on an offer to buy the oppressed party's shares

99 Generally, it is an abuse of process for an applicant to reject an offer that would provide him with everything sought and to continue instead with proceedings (*Balk v Otkritie International Investment Management Ltd* [2017] EWCA Civ 134).[182] There is public interest that the court's resources should not be used for a claim that had become academic in view of the offer (*TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch)* [2019] 5 SLR 69 at [67]).[183] Specifically, in the context of minority oppression claims, where there is a reasonable offer to purchase the allegedly oppressed party's shares, an action for oppression cannot be sustained *(Lim Swee Khiang and another v Borden Co (Pte) Ltd and others* [2005] 4 SLR(R) 141[184] ("*Lim Swee Khiang*") at [97], citing *O'Neill*)[185] The High Court in *Lim Swee Khiang* cited (at [97] Lord Hoffmann's five guidelines in determining what would be a reasonable offer ("the *O'Neill* guidelines"):

> First, the offer must be to purchase the shares at a fair value. Second, the value if not agreed, should be determined by a competent expert. Third, the offer should be to have the value determined by the expert as an expert. Fourth, the offer should provide for equality of arms between the parties. Fifth, the question of costs would have to be considered. The offer should take into account the plaintiffs' costs although this need not always be payable by the defendants as in cases where the

182 DLOA at Tab 8.

183 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 30.

184 PLOA at Tab 8; DLOA at Tab 16.

185 DLOA at Tab 22.

> defendants have not been given a chance to make an offer before the action was launched.

100 At this juncture, it is useful to consider the application of the *O'Neill* guidelines in caselaw. As discussed below (see [101] to [118]), the Singapore and the English courts have consistently applied the *O'Neill* guidelines (even if not expressly referred to as such) in considering the reasonableness of an offer. However, English cases have emphasised that the mere fact that an offer is reasonable does not mean that the courts will automatically strike out an action if the plaintiff rejects the offer. Similarly, Singapore caselaw shows that our courts do not stop at applying the *O'Neill* guidelines but also proceed to consider other factors in determining whether a reasonable offer renders the continued prosecution of the action an abuse of process – *eg*, whether the offer has addressed all reliefs sought in the suit.

Local cases

101 In *Lim Swee Khiang*, the plaintiffs were minority shareholders of a company known as Borden. They brought a petition under s 216 of the CA, alleging that the defendants (the majority shareholders) had conducted the affairs of Borden in a manner which was oppressive to them and / or which disregarded their interests as members of Borden. While the High Court dismissed the claim on grounds that the minority oppression claim was not made out, the court took the view (at [102]) that the plaintiffs - in choosing to continue with the action instead of responding to the buyout offer - were guilty of an abuse of process. In reaching that conclusion, the court found that the offer substantially met the *O'Neill* guidelines. The defendants' solicitors had written in 11 days after the commencement of the action to state that the defendants were willing to purchase the plaintiffs' shares pursuant to a valuation by a professional valuer to be agreed upon between the parties (at [95]). The plaintiffs had declined to discuss the

mechanics of valuation or any details of the valuation or offer. The court noted that if they had responded in a positive way, these issues could have formed part of the negotiations, and the court could have made a decision on the points on which parties were unable to agree (at [98]).

102 After judgment was handed down, the defendants made a similar buyout offer to the plaintiffs, who rejected the offer and appealed against the High Court's decision: *Lim Swee Khiang and anor v Borden Co (Pte) Ltd and others* [2006] 4 SLR(R) 745 ("*Lim Swee Khiang CA*") at [9]. Some of the defendants filed applications to strike out the appeal on grounds that it was an abuse of process. These applications were dismissed by the Court of Appeal ("CA"). The CA held that the appeal was not an abuse of process as the buyout offer was not a reasonable one: it did not include the damages claimed by the plaintiffs arising from the defendants' oppressive acts. Given these findings, the defendants did not seek to press the argument that the appeal was an abuse of process: *Lim Swee Khiang CA* at [10]. While the CA allowed the appeal and ordered the defendants to purchase the plaintiffs' shares, the CA did not specifically address the High Court's findings that the plaintiffs were guilty of an abuse of process.

103 In *Lim Chee Twang v Chan Shuk Kuen Helina and others* [2010] 2 SLR 209 ("*Lim Chee Twang*"),[186] the High Court held (at [140]) that the offer to buy out the plaintiff's shareholding in the companies - "reasonable as it was" - did not render the continuation of the action an abuse of process, because the offer did not cover all the entities involved and also failed to address a number of contested issues such as Ms Chan's disputed loans to BVI (at [138], [140]).

186 DLOA at Tab 15.

104 In *Tan Eck Hong v Maxz Universal Development Group Pte Ltd and others* [2019] 3 SLR 161 ("*Tan Eck Hong*"),[187] the High Court held that the two buyout offers made to the plaintiff were not reasonable. The first offer proposed only a partial buyout of a smaller parcel of 93,085 shares, and did not deal with the plaintiff's pending claim (at [214]). As for the second offer, it did not satisfy the requirement that the shares be purchased at fair value (at [215]) because it was not expressly stated in the offer that "the fair value would be ascertained without applying the minority discount". The second offer also did not contain any offer to pay the plaintiff's legal costs, which had been incurred over the course of the six years during which the action had proceeded; and the plaintiff would still have to go through the trial process to determine his right to costs.

105 Further, the High Court was not satisfied that the procedure for valuation set out in both offers would suffice to determine the fair value of the plaintiff's shares: a trial would have been required to determine various issues in dispute which affected the value of the shares. These included issues such as the validity of the allotment of some four million shares to another company, MDG, as well as the wrongful payment of legal fees. Lastly, apart from considering the *O'Neill* guidelines, the court noted (at [218]) that the second offer had been made at the eleventh hour, and the plaintiff "could hardly be expected to give up six years of litigation on the eve of trial on the basis of such an offer".

English cases

106 Turning to English caselaw, we find – even prior to *O'Neill* – a number of English authorities which dealt with applications to strike out unfair prejudice

187 DLOA at Tab 34.

petitions on the basis that a buyout offer had been made offering the petitioner all the relief which he/she could reasonably expect to obtain at trial.

107 *Re a Company No. 00836 of 1995* [1996] BCC 432 concerned a motion to strike out a petition under s 459 of the Companies Act 1985 on the basis that an offer had been made to purchase the petitioner's shares which would give the petitioner all the relief he could realistically expect to obtain on his petition, and that it would be an abuse of the process of court for him to continue with the petition. The case arose out of a long-running dispute between a father, Mr Albert Thompson ("AT"), and one of his two sons, Julian Thompson ("JT"). The company, which was the subject matter of the application, Gippeswyk Investment Co Ltd ("GICL"), was incorporated in 1960; and in 1962, AT acquired all 200 issued shares in the company in exchange for land which he put into the company. Of the 200 shares, AT held 50 shares, with his two sons holding the remaining shares equally. The falling out between JT and his father, AT, led to JT effectively taking over GICL together with his brother, John. This also precipitated the long running feud between father and son in which numerous lawsuits were filed. Insofar as GICL was concerned, AT commenced the present action when John purported to sell his shares in GICL to JT. AT applied to set aside the purported sale, and also issued a minority shareholder's petition under s 459 of the Companies Act 1985 alleging that GICL's affairs were being conducted in a way that was prejudicial to his interests. In response, JT applied to strike out his father's application under s 459 on the basis that it disclosed no reasonable cause of action and / or was an abuse of process of the court.

108 Justice Weeks QC ("Weeks J"), who heard the case, allowed the striking-out application. He reasoned that it was almost inevitable that the majority shareholder, JT, would be ordered to buy out his father's shares in the event that

his father's petition succeeded. Weeks J observed that cases where a majority shareholder was forced to sell his shareholding to the petitioning minority shareholder must be very rare: in the present case, the circumstances were not so exceptional as to make that a realistic possibility, especially since AT had for the past four years taken no active part in managing the company. As a minority shareholder, AT had no effective way of stopping the unfair treatment which he complained of. Weeks J therefore struck out AT's petition on the basis that an offer had been made which realistically gave AT everything he could expect to obtain if he succeeded in his action (at pp 442 – 443). Weeks J rejected AT's argument that he was entitled to have his day in court and that it would be inappropriate to have matters relating to the valuation of shares in the offer presented decided by an accountant rather than the court (at pp 441 – 442). Instead, Weeks J took the view that there was "great sense in avoiding a day in court and referring the matter, which was ultimately a matter of valuation" to an accountant.

109 In *Re a Company No. 006834 of 1988* (1989) 5 BCC 218, the company was in the business of organising ski holidays in Savoie. It was started in 1978 by the respondent, Kramer, and one Guyatt. Kramer held two-thirds of the share capital with Guyatt holding the remaining one-third. In 1986, Guyatt decided to sever his connections with the company and sold his shares to the petitioner, Kay. Unfortunately for both Kramer and Kay, the business association was unsuccessful, and they agreed that the company should be dissolved. Kay made various complaints against Kramer, alleging, amongst other things that he had charged personal expenses to the company and allowed members of his family and friends to have holidays at the company's expense. Kramer's solicitors wrote to Kay with an open offer to buy his shares in the company at open market value, to be determined by an independent valuer jointly appointed by the parties. This

offer supposedly went further than the common form pre-emption provision in the company's articles which provided that:

> "A member desiring to transfer shares otherwise than to a person who is already a member of the company shall give notice in writing of such intention to the directors of the company, giving particulars of the shares in question. The directors as agents for the member giving such notice may dispose of such shares or any of them to members of the company at a price to be agreed between the transferor and the directors or failing agreement at a price fixed by the auditors of the company as the fair value thereof."

110 Kay brought a petition pursuant to s 459 of the Companies Act 1985, seeking an order that Kramer sell his shares to him, or alternatively, that he be ordered to buy Kay's shares. In response, Kramer applied to strike out the petition on the ground that having regard to the provision of the company's articles and the open offer, the presentation of the petition was an abuse of the court's process.

111 In allowing the striking out application, Hoffmann J (as he then was) summarised the applicable principle as follows (at 220). When it is "plain that the appropriate solution to a breakdown of relations is for the petitioner to be able to sell his shares at a fair price, and the articles contain provisions for determining a price which the respondent is willing to pay or the respondent has offered to submit to an independent determination of a fair price, the presentation or maintenance of a petition under s 459 will ordinarily be an abuse of process. Hoffmann J opined that it would be very unusual for the court to order a majority shareholder who was actively involved in the company's management to sell his shares to the minority shareholder when he was willing and able to buy out the minority shareholder at a fair price. While it was possible that the court could make such an order, the present situation was not such a case. Hoffmann J also rejected (at 221) Kay's argument that the offer would not give him all the relief

sought in the petition given his allegations of improper application of the company's funds. Notably, Hoffmann J held that *it was only in cases of impropriety by the respondent which had affected the value of the shares that it would be inappropriate for the matter to be dealt with by a straightforward valuation in an offer. On the present facts, the effect of the alleged improprieties on the valuation of shares in the company was likely to be minimal*. Further, the valuer would be concerned with applying a suitable multiple to the profits which the company might earn in the future; and Kramer had said that the valuer could take into account any sums which he considered to have been improperly disbursed. As for the objection that the independent valuer's terms of reference did not prevent him from applying a discount to reflect Kay's minority holding, Hoffmann J was of the view that in valuing the shares, the valuer was entitled to fix a value reflecting the involuntariness of the purchase as well as the involuntariness of the sale.

112 In *North Holdings Ltd v Southern Tropics Ltd and others* [1999] 2 BCLC 625 ("*North Holdings*"), in a decision delivered shortly after the judgement by the House of Lords in *O'Neill*, the English CA allowed an appeal by the appellant N Ltd against the lower court's order striking out the appellant's petition under s 459 of the UK Companies Act 1985. In its petition, the appellant – who was the minority shareholder in a company S Ltd – had alleged that it was being unfairly prejudiced by the respondent majority shareholders' failure to account for the profit made by their own wholly-owned company K Ltd, whose establishment and rapid growth had been the result of the respondents' misuse of S Ltd's assets. The respondents had applied successfully in the lower court to strike out the petition on the basis that further prosecution would be an abuse of the process of the court, since the appellant already had the power to require the respondents to purchase its shares at a fair price by exercising a put option in the shareholders' agreement, or by accepting an offer to purchase made by the

respondents. The lower court had struck out the petition on the basis that there was no realistic chance of the court making the order sought in the light of the respondents' offer to buy the shares and the rights given by the shareholders' agreement.

113 On appeal, the appellant argued that the value of the shares should be determined by the court because the appellant's interests had been unfairly prejudiced by actions of the respondents which had been in breach of their fiduciary duties owed to S Ltd; and resolution of the issues raised in the petition involved mixed questions of fact and law appropriate to be determined by the court rather than by auditors of the company. In agreeing with the appellants, the English Court of Appeal held that since there had not yet been any findings of fact as to whether the respondents had misused any of the assets of S Ltd, it was proper – for the purposes of determining whether the petition should be struck out – to assume that the pleaded allegations would be established. It would not be right to conclude, at such an early stage of proceedings, that the appellant's submissions could not succeed. As to whether or not the respondents' actions amounted to a breach of their fiduciary duties, this was likely to depend upon the facts probably upon the extent and type of misuse; and that being so, it would not be right to strike out the petition. The price to be paid for the shares would depend on a decision as to whether any part of the business of K Ltd was held on trust for S Ltd, and if so, how much: as the appellant had pointed out, this raised mixed questions of fact and law which should be decided by the court and not an accountant. It followed that the respondents' offer to purchase and the option in the shareholders' agreement were not sufficient to remove any potential unfair prejudice.

114 Turning to recent cases post *O' Neill, Loveridge v Loveridge* [2021] EWCA Civ 1697[188] concerned proceedings brought by one Michael for the winding up of several family companies pursuant to ss 994-996 of the UK Companies Act 2006 (unfair prejudice) or under s 122(1)(*g*) of the UK Insolvency Act 1986 (the just and equitable ground). The English Court of Appeal held that the petition in respect of the company Kingsford was an abuse of process given that the other two owners had made an offer to purchase Michael's shares in Kingsford at a fair market value (at [124]). The court rejected the argument that what was relevant was the fair market value of the *company* and not the *shares* in it, stating that what must be valued was the share capital, and the notion that the "company" and some distinct meaning for valuation purposes was wrong. While the assets of a company could be valued, valuing them rather than the share capital would not ordinarily result in a value attributable to the shares because it would ignore debts and other liabilities (at [124]–[125]). The court also rejected the argument that there was a risk that an expert would interpret the offer as requiring a valuation of Michael's shareholding in the open market, which could be nil or close to nil, on the basis that there was no market for a minority shareholding. The court pointed out that the offer letter had made clear that no minority discount was to be applied and that both parties would be permitted to make submissions to the expert; and it had also incorporated an invitation to identify any elements not in compliance with the requirements of the *O'Neill* guidelines (at [126]).

115 Critically, having made the above findings, the court proceeded to make the following observations (at [127]):

> However, ***whether an offer complies with O'Neill v Phillips guidelines is not by itself determinative***. As the

[188] DLOA at Tab 18.

> Court of Appeal stated in *Re Sprintroom Ltd* [2019] EWCA Civ 932; [2019] BCC 1031 at [129], ***judges have "counselled against treating the reasonableness of an offer as being a trump card in the hands of the respondent majority shareholder***". The court referred with approval to the judgment of HHJ Cooke in *Harborne Road Nominees Ltd v Karvaski* [2011] EWHC 2214 (Ch); [2012] 2 CBLC 420 ("*Harborne Road*"), where he pointed out at [26] that ***Lord Hoffmann's guidance does not have the status of legislation, and that it would be a cardinal error to approach the matter as if sufficient compliance with the guidelines would inevitably protect the respondent. The question is always whether, in all the circumstances of the case, the applicant has satisfied the conditions required to have the petition struck out or summary judgment granted in his favour, namely that continued prosecution of the petition after making the offer amounts to an abuse of process or is bound to fail. The issue is highly fact sensitive and "consideration of the nature and terms of any offer made can only ever be an intermediate step in the process***".
>
> [emphasis added]

116 In *Robinson v H. G. Robinson & Sons Ltd and others* [2020] EWHC 1 (Ch) ("*Robinson*"),[189] the second to fourth defendants applied to strike out a petition in which the petitioner sought a winding-up order against the first respondent company (at [1]). The then-solicitors to the respondents set out an offer to buy the petitioner's shares at a fair value (at [14]). The court held that even if an alternative remedy existed and the petitioner was acting unreasonably in seeking to have the company wound up regardless of the offer, the court still had a discretion whether or not to strike out the petition (at [29]).

117 On the facts in *Robinson*, the court held (at [62]) that the offer made was fair and the petitioner's refusal to engage in its open-ended terms (namely, the invitation to submit details and counter-proposals) was unreasonable. First, although no offer was made in respect of monies previously applied for the

189 DLOA at Tab 30.

second respondent's benefit, the court noted that given the costs and inconvenience to all parties of a liquidation, coupled with the encouragement which a court should give to offerors to amend their offers, and the court's assessment of "the limited extent to which a liquidator would likely engage in much beyond a fairly rough and ready approach to making adjustments for the respondents' alleged wrongdoings", the lack of such an offer in itself was insufficient to justify the offer being dismissed out of hand (at [39]). Second, although there was no detailed mechanism for valuation of the land, assets belonging to the company would be valued by the appointed expert as an intrinsic part of his valuation of the company's assets, so as to arrive at a fair value of the shares. Moreover, if any of the assets were not company assets but were to be transferred under the offer, the petitioner could have raised this as a point of detail (at [41]). Third, while no offer was made to pay the petitioner's legal costs, this was adequately excused by the fact that the offer had been made before the petition was issued: the principle remains that the absence of an offer to pay costs cannot serve an independent ground for dismissing a petition that is otherwise well founded (at [43]). Fourth, the refusal to provide information about the company paying the respondents' costs of the proceedings was irrelevant to the court's determination of the fairness of the offer. This point arose only in respect of costs incurred *after* the petition was presented (at [44]). Fifth, although it was argued that the offer did not address the parties' dispute over jointly-owned private land, the court was of the view that this did not affect the reasonableness of the offer, as the offer was expressed to represent a full and final settlement of claims between the parties as shareholders of the company. A winding-up order would similarly not provide a solution to issues between the parties in relation to land privately owned by them.

118 In *Re Sprintroom Ltd Prescott v Potamianos and another; Potamianos v Prescott and another* [2019] EWCA Civ 932 ("*Re Sprintroom*"),[190] Dr Potamianos – as the minority shareholder in the company Sprintroom Ltd ("SEL") – brought a petition under ss 994-996 of the UK Companies Act 2006, claiming that he had been excluded from the management of the company and that the affairs of the company were being carried on by the majority shareholder (a Mr Prescott) in a manner that was unfairly prejudicial to Dr Potamianos' interests. Dr Potamianos argued that Mr Prescott's offers to buy out his shares in the company were not fair or reasonable (at [111]). At the same time, the company SEL brought suit against Dr Potamianos and his service company in respect of intellectual property rights in certain software ("the source code claim"). At first instance, the court ordered that the source code claim be tried together with the issues whether the company was a quasi-partnership and whether Mr Prescott had conducted the company's affairs in an unfairly prejudicial manner, with any question concerning the reasonableness of Mr Prescott's offers for Dr Potamianos' shares – insofar as that question required expert valuation evidence – to be determined at a further trial.

119 On appeal, the English Court of Appeal held that the question whether Mr Prescott had made a reasonable offer to buy Dr Potamianos' shares was not logically antecedent to questions of unfairly prejudicial conduct, because the factors that indicated the reasonableness or otherwise of an offer would often be closely bound up with the behaviour that was alleged to be unfairly prejudicial. The terms and conditions of an offer were part of the overall consideration by the court of whether a petition should succeed. The value offered, or the means proposed for arriving at that value, would be an important factor. The fairness of the value might be linked with the substance of the unfair prejudice allegations.

190 DLOA at Tab 29.

Further, the Court of Appeal held that the first-instance judge had erred in deciding that he could not assess the reasonableness of the offers and of Dr Potamianos' response without expert valuation evidence. In the Court of Appeal's view, there was sufficient material to establish that the making and rejection of the offers were not factors that defeated Dr Potamianos' petition by making his exclusion from the company fair: an evaluation of all the circumstances surrounding the offers showed that none of them rendered Dr Potamianos' exclusion from the company fair. As such, the offers could not be relied on to defeat Dr Potamianos' petition; and expert valuation evidence would make no difference to that conclusion.

120 It is worth noting that in coming to the above conclusions, the Court of Appeal highlighted that in cases decided post *O'Neill* where parties have cited the guidance in *O'Neill*, "judges have counselled against treating the reasonableness of an offer as being a trump card in the hands of the respondent majority shareholder" (at [129]). The Court of Appeal cited with approval the judgement of HHJ David Cooke (sitting as a judge in the Chancery Division) in *Harborne Road Nominees Ltd v Karvaski* [2011] EWHC 2214 (Ch) ("*Harborne Road Nominees*").

121 In *Harborne Road Nominees*, the respondents to an unfair prejudice petition filed an application asking *inter alia* that the petition be struck out as an abuse of process. The ground relied on was that the first respondent, Mr Karvaski, had made an offer or offers to purchase the shares in the second respondent company ("Sitewatch" or "the company") beneficially owned by Mr Paul Morris, (the effective Complainant), the refusal of which was unreasonable; and that in consequence, the continued prosecution of the petition was either an abuse or was bound to fail, for the reasons set out in Lord Hoffmann's judgment in *O'Neill v Phillips*. In dismissing the respondents' application, HHJ Cooke

held that while the guidance provided in O'Neill went into considerable detail, "(n)evertheless it does not have the status of legislation". Importantly, in his view -

> The correspondence and argument between ***the parties in this case (eg the reference to an offer "in O'Neill v Phillips format") appeared in my view to approach the matter as if what had to be considered was the extent to which the offer made complied with these guidelines, or the precedents set out in Mr Joffe's textbook, and that if a sufficient degree of compliance was achieved, Mr Karvaski would inevitably be protected from any petition that Mr Morris might issue. That in my view would be a cardinal error. The question for the court is always whether in all the circumstances of the case the Applicant has satisfied the conditions required to have the petition struck out***, or summary judgment in his favour given on it. These Mr Shaw accurately summarised as being that ***it must be shown that the continued prosecution of the petition after the making of the offer amounts to an abuse of process, or was bound to fail. The issue is highly sensitive to the facts and circumstances of each case, and consideration of the nature and terms of any offer made can only ever be an intermediate step in the process***.
>
> [emphasis added]

122 On the facts before him, HHJ Cooke held that where there were issues in the petition relating to allegations of breach of duty owed to the company by one or other party, if they would go to the price of the shares, an expert valuer would not be in a position to determine the factual and legal disputes between the parties. As he pointed out:

> To take an obvious example, if a petitioner alleges that his co-shareholder has diverted business or misapplied assets, it would not be just to require him to accept a price for his shares determined by an expert without an authoritative determination of the claim. The expert could only express an opinion whether the value given to the potential claim in the company's accounts (probably nil) was appropriate, or what effect the existence of the disputed claim might have on the price an arm's length purchaser would be prepared to pay for the shares. Neither of these would be likely to give the petitioner anything like the benefit he would receive if the dispute were resolved in his favour and the breach made good or fully allowed for in the price. The

> Respondent, who must (at the stage of a strike out application) be assumed to be in breach, would benefit from the breach twice over in that he would not only have the proceeds of the breach itself, but be able to acquire the company at a price depressed by the consequences of his own breach.

Hong Kong cases

123 In the interest of completeness, I note that the principles enunciated in the above English authorities have also been accepted and applied by the Hong Kong courts. In *Re Prudential Enterprise Ltd* [2001], the petitioners, who were the company's minority shareholders and siblings of the first respondent (the majority shareholder), presented a petition seeking a winding-up order on the just and equitable ground and alternatively relief under s 168A of the Hong Kong Companies Ordinance (Cap 32), including an order that their shares be purchased at a price to be determined. The petitioners alleged that the first respondent had misappropriated company funds through Interstitial Holdings Ltd, an offshore company (the Interstitial scheme). They further claimed that the first respondent had increased his shareholding from 26.86% to 68.85% by allotting 8,126 shares to himself at gross undervalue (the rights issue exercise) and that he had used the company funds or funds attributable to the company and generated from the Interstitial scheme to pay the $257.8m subscription money for the rights issue exercise. The Interstitial scheme and the use of company funds to finance the rights issue exercise were also the subject matter of a derivative action commenced by the petitioners. The first respondent subsequently offered to purchase the petitioners' shares in the company (the revised offer), on the basis that the 8,126 shares allotted pursuant to the rights issue exercise had not been allotted. The value of the shares would be assessed by an independent expert valuer: the revised offer spelt out the terms on which such valuation would be conducted (*eg*, that the petitioners were only to have information relevant to any point on which the valuer required submissions from

the parties and could only make submissions to the valuer when required and called upon by the valuer). When the petitioners declined to take up the revised offer, the first respondent applied to strike out or stay the amended petition on the ground that the continued pursuit of the petition in the face of the revised offer constituted an abuse of process.

124 In dismissing the first respondent's application to strike out, Chu J held that the basic requirements for a reasonable offer were as set out in the judgement of Lord Hoffmann in *O'Neill*. However, not all petitions for s 168A relief could be suitably dealt with by referring the matter to an expert for valuation of the share price and by having the petitioner's shares bought out at the value determined by the valuer. In the present case, both the rights issue exercise and the Interstitial scheme involved complicated issues of facts and law which an expert lacked the proper machinery to adjudicate upon. Further, the court was not relieved of the task of a trial on the complaints raised by the petitioners under the revised offer nor would it dispense with the hearing on the appointment of the provisional liquidator. The derivative action would go on and judicial resources as well as costs would remain to be incurred. There was no question of an abuse of process as the petitioners would have their day in court whether they rejected or accepted the revised offer.

125 Further, and in any event, Chu J held that it could not be said that the revised offer was plainly a suitable and reasonable one. For example, the revised offer did not provide for 'equality of arms' between the parties. The mechanism envisaged by the revised offer only afforded the petitioners a limited access to company information and opportunity to make representations on the value of the company. It followed that the petitioners would not be able to draw to the valuer's attention matters or areas of concern nor would they be able to make meaningful representation to the valuer on matters or areas of concern. That was

hardly fair nor sufficient given the petitioners' complaint was that the first respondent had been practising a scheme of manipulating of the company funds and assets. In the circumstances, it was not unreasonable for the petitioners to refuse to accept the revised offer.

126 The first respondent's appeal against Chu J's decision was dismissed: *Re Prudential Enterprise Ltd* [2002] 2 HKC 375. The Court of Appeal held that the petitioners were entitled to a fair and reasonable price for their shares, but that the requirements that were necessary to ensure that the petitioners would be given a fair and reasonable price varied, depending on the facts in each case. In the present case, in view of the limited scope of the information provided for in the revised offer by the first respondent, the revised offer was clearly not enough to meet the concerns of the petitioners. For example, while the expert was permitted to take into account the amount of $257.8m paid by the first respondent as subscription money for the new shares, the expert was precluded by the terms of the offer from giving reasons for his valuation; and the petitioners thus had no way of knowing whether he had in fact done so. The issue was not whether the expert knew that he had taken this amount into consideration but whether the petitioners knew on the information available to them whether all their requirements had been met in the valuation of the shares. Further, the petitioners had asked that the valuation be conducted on the basis that the transfer of shares to the first respondent had been wrongfully allotted and on the basis that the company's investment in Interstitial's preference shares be valued as if Interstitial had never existed. The offer did not take these matters into account.

On the appropriate framework to be applied in considering the striking-out application

127 Having examined the above caselaw, I wish to make it clear, first of all, that I reject the second to fourth Defendants' proposed three-stage framework

(see above at [92]). The second to fourth Defendants' framing of their proposed Stage 3 (*ie*, whether the Court is able to utilise its tools and procedures to resolve any impediment to the petitioner's acceptance of the offer) amounts in effect to over-liberalising the court's approach to striking out claims for minority oppression, which would be acutely at odds with the high threshold for O 18 r 19 applications and the judicial recognition that striking out is a draconian practice. As Lord Hoffmann made clear in *O'Neill*, and as our Singapore courts too have held in cases such as *Lim Swee Khiang* and *Lim Chee Twang*, the crux of the matter is that where a reasonable buy-out offer is made to a minority shareholder, and that offer would give the minority shareholder all that he could reasonably expect to obtain from a minority oppression claim, then that offer should generally be accepted. To bring a minority oppression claim in those circumstances would amount to an abuse of process because the relief sought in the proceedings would have been obtained had the offer been accepted. In this context, it is not the role of the court to wade into the fray and to "utilise its tools and procedures to resolve any impediment to the petitioner's acceptance of the offer". For one, any buyout offer is essentially a contract between the parties – and it is trite law that parties are free to contract as they see fit. It is not the role of the court to grease the wheels of contractual negotiation in a buyout offer.

128 Further, I have serious reservations as to the *legal basis* on which the court should "utilise its tools and procedures to remove any impediments to the petitioner accepting the offer". In this regard, the second to fourth Defendants have sought to rely on the words of Morritt LJ in *North Holdings* at 639g:

> Like Aldous LJ I would emphasise the need, in all such cases, for active case management at an early stage so as to reduce the time and expense involved in ascertaining the fair price to be paid for the petitioner's shares. **Where the issue is the basis of the valuation then the identification of the problem and the trial of a preliminary issue directed to it should remove that obstacle to an agreement.** Where the issue is the identity of the

> valuer the problem often arises because the person suggested in the articles or by the majority shareholder is the auditor. If the issue arises from the accounting treatment accorded to certain items then prima facie the auditor would not be a suitable person to carry out the valuation. But more often the objection arises from the belief of the minority shareholder that the auditor will feel beholden to the majority shareholders. **In such cases the obstacle may be removed by the court itself appointing an expert to value the shares; in suitable cases the expert may be the auditor, but acting on appointment by the court rather than by the parties.**
>
> [emphasis in bold]

129 In similar vein (so the second to fourth Defendants say), within the framework of the Rules of Court 2014, O 33 rr 2 and 3 may be used by the court to determine the preliminary issue of the valuation of shares, rather than having a full trial on liability followed by an assessment of damages thereafter. What the second to fourth Defendants have overlooked, however, in citing *North Holdings* (at 639g), is what Morritt LJ said in the preceding paragraph (at 639e):

> In the past the choice appeared to lie between striking out the petition as an abuse of the process of the court and allowing it to proceed to a full hearing. Such hearings were usually long and expensive. The problems were considered in depth by the Law Commission in their report *Shareholders Remedies* (Law Com No 246) presented to Parliament in October 1997. They pointed out in Ch 2 the need for active case management in cases such as this and the opportunity for such management to be afforded by the new rules of civil procedure. **This is, so far as I know, the first appeal concerning a petition under s 459 to come to this court since the introduction of the Civil Procedure Rules 1998, SI 1998/3132.**
>
> [emphasis in bold]

130 The Civil Procedure Rules 1998, SI 1998/3132 ("CPR 1998") replaced the UK Rules of Supreme Court 1965 (on which our Rules of Court 2014 is based: see *Humpuss Sea Transport Pte Ltd v PT Humpuss Intermoda Transportasi TBK* [2015] 4 SLR 625 at [34]). Here, the CPR 1998 has more in common with the new Rules of Court 2021 in that it expressly states:

1.1—(1) These Rules **are a new procedural code with the overriding objective of enabling the court to deal with cases justly.**

(2) Dealing with a case justly includes, so far as is practicable—

(a) ensuring that the parties are on an equal footing;

(b) saving expense;

(c) dealing with the case in ways which are proportionate—

(i) to the amount of money involved;

(ii) to the importance of the case;

(iii) to the complexity of the issues; and

(iv) to the financial position of each party;

(d) ensuring that it is dealt with expeditiously and fairly; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

1.2 The court must seek to give effect to the overriding objective when it—

(a) exercises any power given to it by the Rules; or

(b) interprets any rule.

…

1.4—(1) **The court must further the overriding objective by actively managing cases.**

(2) Active case management includes —

(a) encouraging the parties to co-operate with each other in the conduct of the proceedings;

(b) identifying the issues at an early stage;

(c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(d) deciding the order in which issues are to be resolved;

(e) encouraging the parties to use an alternative dispute resolution(GL) procedure if the court considers that appropriate and facilitating the use of such procedure;

> (f) helping the parties to settle the whole or part of the case;
>
> (g) fixing timetables or otherwise controlling the progress of the case;
>
> (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
>
> (i)dealing with as many aspects of the case as it can on the same occasion;
>
> (j) dealing with the case without the parties needing to attend at court;
>
> (k) making use of technology; and
>
> (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.
>
> [emphasis in bold]

131 It is clear that under the CPR 1998, the court must have a hand in actively managing cases. Morritt J's remarks must be read in that context – that given the change to the civil procedure rules in the UK, the court was empowered to actively manage cases, and could, to that end, make orders in an unfair prejudice petition to remove obstacles to an agreement between parties for the valuation and buyout of the shares. In contrast, under the Rules of Court 2014, there is no similar provision empowering the court to actively manage cases in such a manner (for the purposes of the present judgement, I do not find it necessary to discuss whether the court's powers under the Rules of Court 2021 extend to making orders in minority oppression proceedings "to remove any impediments to the petitioner accepting the [buyout] offer").

132 For completeness, I also examine the principles in relation to O 33 r 2; specifically, whether they afford the court the power to "remove any impediments" to the plaintiff in a minority oppression suit accepting a buyout offer by, *inter alia*, ordering a preliminary trial of the valuation of shares. This point was raised by counsel for the first defendant, who sought and obtained

leave to make short submissions to assist the court, on the basis that the first defendant – though not a party to the striking-out application *per se* – was nevertheless an interested party.

133 It is trite that O 33 r 2 is a power-conferring provision, and in deciding whether this power should be exercised, the only question the court has to consider is whether substantial time and expenditure would be saved in respect of the trial of the action as a whole if it is exercised: *ACB v Thomson Medical Pte Ltd and ors* [2017] 1 SLR 918 at [22], citing *Federal Insurance Co v Nakano Singapore (Pte) Ltd* [1991] 2 SLR(R) 982 at [25]. It is therefore clear that the court's power under O 33 r 2 is meant to be exercised with a view towards saving time and expense at the trial itself. It is not designed as a tool for the court to remove any impediments which stand in a way of a minority shareholder accepting a buyout offer, especially absent any provision in the Rules of Court 2014 which are comparable to Rules 1.1 and 1.4 of the CPR 1998. I would add that even if it were open to me to exercise my power under O 33 r 2 in the manner suggested by the first defendant, I would decline to do so, as it is unclear whether ordering a preliminary trial of the valuation of the shares will save substantial time and expenditure.

134 Ultimately, the reason why the rejection of a reasonable buyout offer constitutes an abuse of process is because such an offer – if it gives the plaintiff all he could reasonably expect to obtain upon succeeding at trial – renders the suit *completely unnecessary*. Otherwise, the presence of a reasonable buyout offer *per se* is not inherently anathema to the plaintiff's continued prosecution of his action. A close examination and comparison of what the plaintiff would receive under the buyout offer versus the reliefs sought in the suit should be undertaken so as to determine whether the buyout offer renders the suit completely unnecessary.

135 Having considered the existing authorities, I am of the view that in determining whether a minority oppression claim should be struck out where a buyout offer has been made, it will be helpful to adopt the following framework:

(a) **Stage 1:** Is the offer presented a "reasonable offer", taking into account Lord Hoffman's guidelines in *O'Neill v Phillips*? This is a logical starting point – the offer must have been a reasonable one such that the plaintiff could be expected to accept it.

(b) **Stage 2:** If the offer is a reasonable one, was the plaintiff justified in rejecting that offer and choosing to seek relief by bringing a claim for minority oppression? Here, one key consideration is whether the offer encompasses all the reliefs sought in the plaintiff 's claim. To determine this, close attention must be paid to the reliefs sought and what the plaintiff can reasonably expect to obtain at trial. If the buyout offer contains all the reliefs which the plaintiff can reasonably expect to obtain at trial, then the striking out of his action would be appropriate, on the basis that the continued prosecution of his action serves no useful purpose and is an abuse of process (*Chee Siok Chin* at [34(c)]). A related consideration at this stage is whether there are any disputed issues which are more appropriately determined by the court. In approaching Stage 2 in the present case, it is also appropriate – for the purposes of determining whether Mr Kroll's action should be struck out – to assume that the allegations he has pleaded *will* be established. As the English CA pointed out in *North Holdings* (at 635e–f), at such an early stage of proceedings, there will not yet have been any findings of fact made by the court vis-à-vis the plaintiff's allegations of oppressive conduct; and it "is proper to assume that the pleaded allegations will be established".

The offer is a reasonable offer under the* O'Neill *guidelines

136 Applying the above framework, I accept that the Buyout Offer appears to be a reasonable one *per* the *O'Neill* guidelines. First, the offer is for the purchase of shares at fair value – having expressly provided no minority discount (see *Tan Eck Hong*) and provided for the 7.67% shareholding that Mr Kroll claims to be entitled to. Second, a set of criteria has been set for the joint appointment of a suitably qualified assessor. Third, provision has been made for the date of valuation and for parties to propose factors and matters which could affect the valuation (see *Robinson*). Fourth, provision has also been made for parties to have equal access to documents and information and to make submissions to the assessor. Lastly, the Buyout Offer has considered the question of the costs of the assessor and assessment process as well as the legal costs in the Suit (see *Tan Eck Hong*; *O'Neill*).

No finding of abuse of process

137 While I accept that the Buyout Offer is reasonable in that it meets the *O'Neill* guidelines, I am of the view that striking out is not warranted in the present case. I explain.

138 First, I do not find that the Buyout Offer has dealt with all issues in dispute in Suit 915, such that it results in there being no useful purpose served by Mr Kroll continuing with his claim (see *Chee Siok Chin* at [34(c)]). For one, a reason (among several) given by Mr Kroll for rejecting the Buyout Offer is that it excludes the USD 180 million valuation of CTX. The dispute between the parties as to whether CTX has been rightly valued at USD 180 million as of May 2021 is one which has not been addressed in the buyout offer. In Mr Kroll's pleadings, he takes issue with what he claims to be differing valuations of CTX at different times, whereas Mr Wong alleges in his Defence and Counterclaim

that the valuation at USD 180 million arose from the valuation benchmark agreed on in the ARIA, which came into being only after and as a result of the 30 April 2021 EGM (see above at [41]–[42]). I do not think that the invitation in the Buyout Offer to propose post-value adjustments suffices to resolve this issue, because the Buyout Offer sets the date of valuation at 30 April 2021, thereby precluding any discussion of whether the USD180 million valuation may still be adopted during the valuation process. Nor am I persuaded by the second to fourth Defendants' assertion that the assessor will be free to consider the USD180 million figure as the appropriate valuation benchmark, given that the Buyout Offer sets the valuation date at 30 April 2021, and the USD 180 million valuation is said by the second to fourth Defendants to arise from developments *after* 30 April 2021.

139 I note that the second to fourth Defendants have sought to explain the 30 April 2021 valuation date stated in the Buyout Order on the basis that this was the date of the EGM at which resolutions were passed, leading to the dilution of Mr Kroll's shareholding. However, this explanation seeks unfairly to telescope Mr Kroll's complaints of oppressive conduct into one single event – *viz*, the 30 April 2021 EGM – when in fact, an examination of his pleadings reveal that his complaints range far beyond the EGM and the resolutions that led to his share dilution. From Mr Kroll's SOC, it is evident that the oppressive conduct he complains of started *before* 30 April 2021.

140 Thus, for example, Mr Kroll has charged[191] that the second defendant Mr Wong and the fourth defendant Ms Hong – both of whom he alleges were shadow directors of CTX at all material times – caused CTX to enter into "questionable contracts involving large sums of money" sometime in 2019 that

191 SOC (Amendment No. 1) at para 57(a).

benefited a company named Zeepson Technology of which Ms Hong was the founder, CEO and / or majority shareholder. In oral submissions, counsel for Mr Kroll described this as "self-dealing" by the second to fourth Defendants which contributed to running down the company's funds. Mr Kroll also pleads that around the same period, Mr Wong and Ms Hong caused CTX to enter into "questionable contracts involving large sums of money" with another company named Saibotan, in which another CTX shareholder Mr Yang was a director. Large sums totalling more than SGD 3 million – accounting for approximately 35% of CTX's paid-up capital – were paid out to Zeepson and Saibotan pursuant to these contracts. Mr Kroll further pleads that around April 2021, he was informed by Mr Wong and Ms Hong of alleged "problems" between Xiamen Anne (then a shareholder of CTX) and Chinese security regulators which necessitated CTX having to "automatically buy back" all of Xiamen Anne shares for SGD 10 million.[192] At this time, Mr Kroll was told by Mr Wong and Ms Hong that CTX was "insolvent", that CTX faced "numerous cashflow difficulties", and that CTX needed to "clear the deck" of existing shareholders "failing which [it] would be shut down".[193] It was in these circumstances that Mr Wong and Ms Hong "pressured" Mr Kroll "to exit CTX at a low price. Mr Kroll was given two options, both of which involved his exiting CTX, and was told that he had to relinquish his shareholding before the new investor "found" by Mr Wong and Ms Hong – *ie*, Dr Bai – would agree to inject funds into the company.[194] When Mr Kroll declined to take up either of the two options given to him, he was shortly thereafter given one day's notice of an EGM on 30 April 2021. On the same day, CTX's ACRA records were also amended so as to reflect *inter alia* Mr Wong's shareholding at 51.9% (with Mr Kroll at 7.67%). The shareholdings

192 SOC (Amendment no. 1) at para 63.

193 SOC (Amendment no. 1) at para 63.

194 SOC (Amendment no. 1) at para 65.

of two erstwhile directors Mr Chong and Ms Chan were removed and reduced respectively, while Dr Bai and his company Asia Green Fund were concurrently introduced as new shareholders holding a combined 24.5% of CTX's shares. These "carefully-timed" amendments to CTX's ACRA records "provided Mr Wong with majority voting rights at the upcoming 30 April EGM".[195] They also entitled Dr Bai and Asia Green Fund to attend and vote at the 30 April 2021 EGM (though in the end, neither voted at the EGM).

141 Reading Mr Kroll's SOC as a whole, therefore, his complaints about the oppression of his minority interest encompass events and conduct stretching back beyond 30 April 2021. There is some merit in his submission that the valuation must take into account disputed issues pre-dating the 30 April 2021 EGM. The Buyout Offer does not address this aspect of Mr Kroll's claim at all.

142 Insofar as the second to fourth Defendants have tried to suggest that any such gaps would be addressed by the appointed assessor making "post-value adjustments", no coherent explanation has been proffered as to how the assessor may go about making such adjustments to account for the pre-30 April 2021 instances of allegedly oppressive conduct. In any event, I am of the view that these allegations of oppressive conduct raise issues of mixed fact and law that are far more suitably determined by the court, rather than by an appointed assessor. The allegations relating to Zeepson, Saibotan and Xiamen Anne are essentially allegations about Mr Wong and Ms Hong running down CTX's funds prior to their claims about CTX's alleged "insolvency" and "cashflow difficulties" and their attempts to "pressure" Mr Kroll to exit the company at a low price. To borrow the words of HHJ Cooke in *Harborne Road Nominees*, it would not be just in this situation to require Mr Kroll to accept a price for his

195 SOC (Amendment no. 1) at paras 68 - 69.

shares determined by an assessor without an authoritative determination of his claims: the assessor can only express an opinion whether the value given to the potential claims in the company's accounts is appropriate, or what effect the existence of the disputed claims may have on the price an arm's-length purchaser will be prepared to pay for the shares. Neither of these options is likely to give Mr Kroll anything like the benefit he will receive if the dispute were resolved in his favour and the breaches made good or fully allowed for in the purchase price.

143 Finally, I also find that there is some merit in Mr Kroll's argument that pending the completion of the discovery process in this suit, he possesses insufficient information to consider the Buyout Offer in a meaningful manner. Mr Kroll had earlier sought documents relating to the SGD 10 million repurchase of shares from Xiamen Anne. At the hearing, his counsel informed me that the Defendants had so far declined to produce these documents on grounds that they were confidential, and that nonetheless, having regard to parties' discovery obligations in the litigation process, Mr Kroll expected these documents to surface during the discovery process.[196]

The defendants' alternative arguments do not successfully make out grounds for the finding of an abuse of process

144 Although the second to fourth Defendants' submissions in the striking-out application focused on Mr Kroll's alleged abuse of process in maintaining Suit 915 in the face of the Buyout Order, in the course of the hearing before me, arguments were put forward in which the defendants appeared to take the position that even leaving aside the Buyout Order, Mr Kroll was in abuse of process because Suit 915 had been commenced – and was being maintained – for some ulterior or improper purpose or in an improper way" (*Chee Siok Chin*

196 Transcript 5 July 2022 at p 77 lines 1 – 5.

at [34]; see above at [66]). According to the second to fourth Defendants, Mr Kroll's conduct demonstrates that he is merely using the suit for the collateral purpose of pressuring the defendants into agreeing to a buy-out of his shares at a highly inflated price.

145 I do not find that the evidence before me shows Mr Kroll to have commenced proceedings out of any ulterior motive or collateral purpose. The defendants have pointed to certain examples of Mr Kroll's conduct as being indicative of his intention to use the proceedings as leverage to threaten and/or seek to embarrass or scandalise the defendants (see above at [72]). However, the second to fourth Defendants' claims based on these examples seem somewhat speculative – even fanciful.

146 Thus, for example, there is no basis to suggest that the filing of a generally-endorsed Writ of Summons or Mr Kroll's delay in filing his SOC is a "scare tactic". As stated in Mr Kroll's affidavit, the request for an extension of time to file the SOC arose because parties had been engaged in without-prejudice settlement correspondence/discussions.[197] While the second to fourth Defendants contend that Mr Kroll did not actually wish to proceed with the suit, this is contradicted by the fact that he has since filed his SOC and has shown every sign of wishing to proceed with the suit.

147 To sum up: in respect of prayer 1 of SUM 1507, the second to the fourth defendants have failed to satisfy me that this is a plain and obvious case for striking out the Statement of Claim in its entirety. I address next their alternative

197 Daniel Kroll's affidavit filed 9 May 2022 at para 49.

prayers for the striking out of paragraphs 57 to 59 and paragraphs 55 to 56 of the statement of claim.

Prayer 2: Whether the Zeepson and Saibotan Pleadings should be struck out

The parties' respective positions

148 I first address paragraphs 57 to 59 of the Statement of Claim. These are what I earlier alluded to as the "Zeepson and Saibotan Pleadings". In his affidavit, Dr Bai states that the amounts paid out by CTX correspond (subject to exchange rate differences) to the sums contracted for with Zeepson and Saibotan.[198] Dr Bai also claims that there is no link between Mr Kroll's allegation of overpayment on these contracts and his claim of oppression by virtue of the share dilution.[199] According to Dr Bai, even if one were to pitch Mr Kroll's case at its highest, any alleged overpayment and opaque dealings vis-à-vis the Zeepson and Saibotan contracts would amount to corporate wrongs and not wrongs against any individual shareholder of CTX.[200]

149 In his reply affidavit, Mr Kroll states that the injury occasioned is "instructive" of how the second to fourth defendants had "managed the affairs of CTX in an opaque and commercially unfair manner…coupled with the dire financial situation of CTX in the lead up to [his] disputed dilution of [his] shareholding on 30 April 2021."[201]

---

198 Dr Bai Bo's affidavit filed 18 April 2022 at paras 98–100 and pp 430–526.

199 Dr Bai Bo's affidavit filed 18 April 2022 at para 101.

200 Dr Bai Bo's affidavit filed 18 April 2022 at para 102.

201 Daniel Kroll's affidavit filed 9 May 2022 at para 52.

150 Mr Kroll argues that O 18 r 19(1)(*a*) does not apply to the Zeepson and Saibotan pleadings. On a legal basis, these pleadings are of material facts – specifically, the second and fourth defendants' opaque contractual dealings pertaining to the oppression of the plaintiff, to benefit their self-interests in a way grossly commercially unfair to the plaintiff as a minority shareholder.[202] On a factual basis, the email correspondence from Mr Chong dated 1 January 2021 indicates potential mismanagement or misappropriation of substantial funds in a self-serving manner, which reinforces the need for the second to fourth defendants' position to be tested at trial.[203]

151 Mr Kroll also argues that Order 18 r 19(1)(*b*) does not apply to the Zeepson and Saibotan pleadings. These pleadings pertain to relevant facts as they pertain to the oppression of his minority interests vis-à-vis the transfers of 35% of CTX's paid-up capital at that time. These pleadings are also not obviously unsustainable as they are supported by documentary evidence, such as Mr Chong's email dated 1 January 2021 and audio recordings of the inconsistent and vague explanations provided by the second to fourth defendants.[204]

152 Mr Kroll also submits that Order 18 r 19(1)(*c*) does not apply to the Zeepson and Saibotan pleadings as they do not prejudice, embarrass or delay the fair trial of Suit 915.[205] Nor does Order 18 r 19(1)(*d*) apply to the Zeepson and

---

202 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 69(a).

203 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 69(b).

204 Plaintiff's Written Submissions for HC/SUM 1507/2022 at paras 70–71.

205 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 72.

Saibotan pleadings as they do not amount to an abuse of the process of the court, applying the test set out in *Chee Siok Chin* (at [34]).[206]

153 The second to fourth Defendants, on the other hand, submit that the Zeepson and Saibotan pleadings are factually unsustainable as the documentary evidence shows that there was no overpayment to Zeepson and Saibotan .[207] Moreover, as Mr Kroll was only a shareholder when the contracts were entered into, there was no basis for the transactions to be disclosed to him.[208] At its highest, the issue of the Zeepson and Saibotan contracts is a corporate wrong.[209] Further, Mr Kroll had been made aware of the matter through Mr Chong's 1 January 2021 email, but he had chosen to do nothing at that juncture.[210]

My decision on Prayer 2

154 Having considered the parties' submissions, I find no basis for granting the striking-out sought under prayer 2 of SUM 1507. The Zeepson and Saibotan pleadings are factually and legally sustainable, and form part of Mr Kroll's case of oppression of his minority interest.

The Zeepson and Saibotan pleadings are not factually unsustainable

155 In my view, the second to fourth Defendants' contention that the Zeepson and Saibotan pleadings are factually unsustainable is premised on a narrow and pedantic reading of these pleadings. As I noted earlier, Mr Kroll's complaint in paragraphs 57 to 59 of the Statement of Claim is that Mr Wong and Ms Hong

---

206 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 73.

207 Defendants' Written Submissions for HC/SUM 1507/2022 at para 189 – 192.

208 Defendants' Written Submissions for HC/SUM 1507/2022 at paras 195–198.

209 Defendants' Written Submissions for HC/SUM 1507/2022 at para 199.

210 Defendants' Written Submissions for HC/SUM 1507/2022 at paras 201–202.

caused CTX to enter into "questionable contracts involving large sums of money" which – as his counsel put it in oral submissions – contributed towards running down the funds of the company. As pleaded by Mr Kroll, large sums totalling more than SGD 3 million – accounting for approximately 35% of CTX's paid-up capital – were paid out to Zeepson and Saibotan pursuant to these contracts. Moreover, the Zeepson contracts benefited a company of which Ms Hong – allegedly a shadow director of CTX – was the founder, CEO and / or majority shareholder.

156 Viewed in this light, it is not plain and obvious to me that what is pleaded is factually unsustainable. The second to fourth Defendants say that Mr Kroll has alleged overpayment; and in this connection, they point to the fact that the Zeepson and Saibotan contractual documents have already been disclosed, and that these contractual documents show there was no overpayment made.[211] However, Mr Kroll's complaint is that Zeepson and Saibotan were paid *in excess* of the contract sums. Absent any documentary evidence of payments made to Zeepson and Saibotan which correlate to the sums stated in the contracts, I see no basis for concluding that Mr Kroll's claims are so factually unsustainable that they ought to be struck out at this stage. I should add that even if there were some evidence available at this interlocutory stage which appears to contradict Mr Kroll's case, it is not for the court at this stage to engage in assessing the weight of the evidence available: that is a task which strictly belongs to the trial judge (see *Bunga Melati* at [44]–[45], [52]).

---

211 Defendants' Written Submissions for HC/SUM 1507/2022 at para 189; Dr Bai Bo's affidavit filed 18 April 2022 at pp 430–571.

The Zeepson and Saibotan pleadings are not legally unsustainable

157 The second to fourth Defendants submit that no legal basis has been pleaded as to why Mr Kroll, as a minority shareholder, should have legitimately expected to be contemporaneously informed of the transactions between CTX and Zeepson and/or Saibotan. Again, I find this an unduly narrow and pedantic characterization of the pleadings. In fact, Mr Kroll avers in his SOC that his legitimate expectations include (*inter alia*) the proper administration of CTX's affairs. While he mentions that "none of these transactions were disclosed to [him] at the material time",[212] I do not think that the SOC specifically alludes to "a right, qua shareholder, to expect to be updated on CTX's multiple transactions contemporaneously".[213]

The Zeeptson and Saibotan pleadings do not appear to be allegations of corporate wrongs per se

(A) THE LAW ON MINORITY OPPRESSION

158 Mr Kroll's claim was brought under s 216 of the CA, which provides for personal remedies in cases of oppression or injustice. S 216(1) CA provides that:

> 216.—(1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister may apply to the Court for an order under this section on the ground —
>
> (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their

212 SOC (Amendment No. 1) at para 59.

213 Defendants' Written Submissions for HC/SUM 1507/2022 at para 197.

> interests as members, shareholders or holders of debentures of the company; or
>
> (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

159 The starting point of shareholder litigation is the proper plaintiff rule (see *Foss v Harbottle* [1843] 2 Hare 461 ("*Foss v Harbottle*"); *Leong Chee Kin (on behalf of himself and as a minority shareholder of Ideal Design Studio Pte Ltd) v Ideal Design Studio Pte Ltd and others* [2018] 4 SLR 331 ("*Ideal Design*")[214] at [81]). Essentially, as the company is a separate legal person in its own right, a shareholder has no standing to bring proceedings where wrongs *to the company* are concerned. The other side of the proper plaintiff rule is the bar on recovering reflective loss ("the no reflective loss principle"), where a a person may not initiate an action to recover a loss which he has suffered by virtue of a diminution in the value of his shares in a company which merely reflects the company's own loss and for which the company can be made whole if it were to pursue its rights against the party responsible for that loss (*Ideal Design* at [82]). Taken together, the proper plaintiff rule and the reflective loss principle establish a delineation between personal and corporate rights. In essence, a breach of a right vested in a shareholder should be vindicated at the suit of the shareholder, while a breach of a right vested in the company should be vindicated at the suit of the company (*Ideal Design* at [83]).

160 It is against the backdrop of this delineation between corporate and personal rights that the statutory regime of s 216 CA should be considered. S 216 CA is a mechanism by which shareholders can bring proceedings for

---

214 PLOA at Tab 7.

personal wrongs. The rationale for limiting the application of s 216 CA to personal wrongs was laid out in *Ng Kek Wee v Sim City Technology Ltd* [2014] 4 SLR 723 ("*Ng Kek Wee*")[215] at [65]:

> ***Allowing an essentially corporate claim to be pursued under s 216 of the Companies Act would be an abuse of process as it amounts to an improper circumvention of the proper plaintiff principle*** which, far from being a legalistic procedural obstacle, is the consequence of the fundamental doctrine of separation of legal personality that underpins company law. Where a wrong has been done to the company, the interests of other shareholders of the company as well as the company's creditors will have been similarly affected. ***The claimant shareholder should not be allowed to proceed by way of a* personal *action and recover at the expense of these other similarly affected parties.***
>
> [emphasis in bold]

161 As such, a shareholder's attempt to use s 216 CA to vindicate a right vested in the company can be considered an abuse of process (*Ideal Design* at [83]). That being said, recognizing that the distinction between personal and corporate wrongs is not always clear, the Court of Appeal in *Ho Yew Kong v Sakae Holdings Ltd and other appeals and other matters* [2018] 2 SLR 333 ("*Ho Yew Kong*")[216] held that where a s 216 oppression action features both personal wrongs and corporate wrongs, the following framework is to be applied to ascertain whether the claim is an abuse of process (at [116]):

> (a) **Injury**
>
> > (i) What is the real injury that the plaintiff seeks to vindicate?
> >
> > (ii) Is that injury distinct from the injury to the company and does it amount to commercial unfairness against the plaintiff?
>
> (b) **Remedy**

---

215 DLOA at Tab 20.

216 PLOA at Tab 6; DLOA at Tab 12.

> (i) What is the essential remedy that is being sought and is it a remedy that meaningfully vindicates the real injury that the plaintiff has suffered?
>
> (ii) Is it a remedy that can only be obtained under s 216?

162 In *Ho Yew Kong*, the oppression claims brought by Sakae pertained to personal wrongs. The real injury the plaintiff sought to vindicate was the injury to its investment in the joint venture and the breach of its legitimate expectations as to how the company's affairs and its financial investment would be managed. The court reasoned at [127]:

> 127 While the aforesaid conduct also constituted a wrong against the Company in the sense that assets belonging to the Company were misappropriated at Andy Ong's initiative, it *separately* amounted to a *distinct* personal wrong against Sakae, a minority shareholder who had let Andy Ong and his team manage the Company's affairs because of the long-standing friendship between Andy Ong and Foo, the chairman of Sakae's board. Andy Ong knew that Foo (and by extension, Sakae) trusted him and deliberately took advantage of that trust, using the Company as a vehicle through which he cheated Sakae. The result of this was that there were systemic abuses which benefitted one group of shareholders (namely, GREIC and, subsequently, ERC Holdings as well, both of which were controlled by Andy Ong at the material time) at the expense of the other (namely, Sakae)… these transactions taken together, coupled with the systemic nature of Andy Ong's abuse, occasioned serious commercial unfairness to Sakae.

163 Sakae's desired remedy of exiting the joint venture agreement, which was only available under s 216 CA, offered the only way in which it could vindicate the real injury it had suffered (*Ho Yew Kong* at [124], [125], [128]).

164 Applying the *Ho Yew Kong* framework, I am of the view that Mr Kroll has a legal basis for claiming that a real and distinct injury has arisen. In written submissions, counsel for Mr Kroll relies on the case of *Ho Yew Kong* to argue that while the Zeepson and Saibotan payments are a wrong to CTX, they are also a distinct wrong against Mr Kroll, as the misappropriation of sums from CTX

without Mr Kroll's knowledge constituted a breach of his legitimate expectation that the company's funds would not be mismanaged.[217] It is also submitted that these payments were *part* of multiple instances of abuse by the second to fourth Defendants which occasioned commercial unfairness to Mr Kroll.[218]

165 Reading the Zeepson and Saibotan pleadings in the context of the Statement of Claim as a whole, I understand them to form an integral part of Mr Kroll's case on minority oppression. As I understand it, Mr Kroll's complaint is not merely that his shareholding was diluted at the 30 April 2021 EGM. Mr Kroll claims that prior to 30 April 2021, the Defendants – specifically, Mr Wong and Ms Hong – had been running CTX as they pleased in an "opaque" manner; that in running CTX as they pleased, they had substantially depleted CTX's funds with costly "questionable" transactions (the multi-million dollar payments to Zeepson and Saibotan, and later, the SGD 10 million "buy-back" of Xiamen Anne's shares); that having brought about these "questionable" transactions, they had then sought to "pressure" him to exit the company at a "low price" by telling him that the company was "insolvent" and that its intended saviour Dr Bai would only inject new funds if he (Mr Kroll) left; and that when he refused the options they gave him for exiting the company, they had taken steps to dilute his shares at the 30 April 2021 EGM.

166 In sum, therefore, I do not find that Mr Kroll has failed to plead a distinct injury to himself *qua* shareholder. I reject the Defendants' submission that the Zeepson and Saibotan pleadings merely disclose a corporate wrong.

---

217 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 69(a)(ii)(1).

218 Plaintiff's Written Submissions for HC/SUM 1507/2022 at para 69(a)(ii)(3).

167 Further, the essential remedy sought by Mr Kroll, like that sought in *Ho Yew Kong*, allows him to exit CTX with minimal loss and to vindicate meaningfully the injury of a breach of his legitimate expectations. This is not a case where, assuming counsel for Mr Kroll successfully makes out the arguments it alludes to in its written submissions (see above at [164]), Mr Kroll would not be entitled to the remedy of a buyout of his shares or a winding-up. As the action is not plainly or obviously unsustainable, the ground for striking out under O 18 r 19(*b*) has not been made out.

168 That said, paragraphs 57 to 59 of the Statement of Claim are currently drafted in a rather clumsy manner. For example, the description which counsel applied to the Zeepson and Saibotan contracts during oral submissions –*viz*, transactions which ran down the company's funds – is not specifically pleaded (though paragraph 58 does plead the material facts relating to the allegedly disproportionate amounts paid). As another example, while paragraph 57 expressly refers to the contracts having "benefitted companies linked to Ms Hong and Mr Yang" and while counsel characterised these contracts as instances of "self-dealing" by the Defendants, it is not clear why the contracts with Saibotan – of which *Mr Yang* is a director – would amount to *"self-dealing" by the Defendants*.

169 I do not think the flaws in the pleadings are so irretrievably grave as to warrant striking-out at this juncture; and since counsel for Mr Kroll have indicated in their letter of 8 July 2022 that they are prepared to apply for leave to amend their pleadings, I will leave them to do the necessary in light of the comments I have made in this judgement.

Prayer 3: The MAS Form 11 Forgery Pleadings

The parties' respective positions

170 The second to fourth Defendants' position is that there is no link between this allegation of forgery and Mr Kroll's claim for oppression,[219] and that at its highest, the allegation pertains to a corporate wrong and not a wrong against any individual shareholder of CTX.[220] In response, Mr Kroll states that the injury occasioned by the second defendant's conduct has "directly and personally exposed [him] to have made a false declaration to the regulator".[221] In reply, the second to fourth Defendants maintain that even if the allegation (which is denied by Mr Wong) were true, it has no correlation to money or monies' worth.[222]

My decision on Prayer 3

171 It is important to point out that the "forgery" complained of by Mr Kroll relates to Mr Wong having appended Mr Kroll's digital signature to the MAS Form 11 without the former's prior knowledge. However, as counsel conceded in the course of the hearing, this is not a case where Mr Kroll is saying that he never agreed to be appointed as director and / or had no idea a Form 11 would be submitted to MAS for this purpose. Indeed, *per* paragraph 57 of the Statement of Claim, Mr Kroll does not deny that at the time the MAS Form 11 was submitted, he had already agreed to be a director of CTX.

172 At the end of the day, even assuming the facts constituting the alleged "forgery" are all made out, I do not see how these facts would establish – or

---

219 Bai Bo's affidavit filed 18 April 2022 at para 104.

220 Bai Bo's affidavit filed 18 April 2022 at para 105.

221 Daniel Kroll's affidavit filed 9 May 2022 at para 53.

222 Bai Bo's affidavit filed 30 May 2022 at para 44.

relate to – a case of oppression of Mr Kroll's minority interest. In his affidavit, Mr Kroll has put forward the hitherto unpleaded assertion that Mr Wong's actions "directly and personally exposed" him (Mr Kroll) to "have made a false declaration to the regulator".[223] I do not see how this belated assertion helps his case. Even if it is true that Mr Wong's actions have somehow exposed Mr Kroll to the risk of having "made a false declaration to the regulator", I do not see – and Mr Kroll has not explained – how this constitutes *oppression of his interest as a minority shareholder*.

173 For the above reasons, I agree with the second to fourth Defendants that the MAS Form 11 Forgery Pleadings are legally unsustainable and should be struck out under O 18 r 19(1)(*b*).

Prayers 2 and 3: Attempt to make out O 18 r 19(*c*)

174 On a final note, the second to fourth Defendants argue at the end of their submissions that since the Plaintiff has admitted that both the Saibotan and Zeepson pleadings and the MAS Form 11 Forgery pleadings constitute "evidence" of the second to fourth Defendants' disregard of the Plaintiff's minority shareholder interest, these pleadings should be struck out on the basis that they offend O 18 r 7(1): according to the second to fourth Defendants, the pleading of "evidence" – as opposed to "facts – prejudices, embarrasses and delays the trial of the action and is beyond the plaintiff's right.[224] I find this argument to be contrived and without merit: Mr Kroll's point appears simply to be that the pleadings are relevant to his claim in minority oppression.

---

223 Daniel Kroll's affidavit filed 9 May 2022 at para 53.

224 Defendants' Written Submissions for HC/SUM 1507/2022 at paras 214–216; Daniel Kroll's affidavit filed 9 May 2022 at para 51.

Summary of orders made in SUM 1507

175 In summary, the orders I make in SUM 1507 are as follows. Prayer 1, which seeks the striking-out of the entire Statement of Claim, is dismissed. Prayer 2, which seeks in the alternative the striking-out of paragraphs 57 to 59 of the Statement of Claim, is dismissed. Prayer 3, which seeks in the alternative the striking-out of paragraphs 55 to 56 of the Statement of Claim, is allowed: paragraphs 55 to 56 are to be struck out accordingly. Prayer 4 is allowed: the plaintiff Mr Kroll is to have 7 working days from today to file and serve the amended Statement of Claim. I should make it clear that the amendments I refer to are the deletion of paragraphs 55 and 56. Any other amendments which Mr Kroll seeks to make to the Statement of Claim should be the subject of an application for leave to amend.

HC/RA 169/2022

176 I address next RA 169, which is the second to fourth defendants' appeal against the SAR's order that the plaintiff Mr Kroll provide the three of them with security for costs totalling $70,000 for the period up to the conclusion of discovery. The second to fourth defendants contend that the quantum of security ordered is inadequate, and that the appropriate quantum should be $62,500 *for each Defendant* (*ie*, $187,500 in total).

177 The second to fourth Defendants advance the following reasons as to why a higher quantum for security should be ordered:

(a) The issues within the Suit are factually complex, requiring more time and costs to address, and to date, it has necessitated significantly and atypically voluminous pleadings;[225]

(b) The next phase of proceedings (general discovery) is likely to be extensive based on the issues pleaded by Mr Kroll, who also intends to rely on an unconfirmed number of surreptitiously recorded conversations from December 2020 to May 2021;[226]

(c) The security ordered in relation to the first defendant, CTX, was $40,000, despite the fact that CTX is merely a nominal party – whereas the second to fourth defendants are substantive parties and need to address separate cases notwithstanding the fact that they currently share common counsel;[227]

(d) The present dispute is a complex one which warrants a departure from the Appendix G guidelines.[228]

178 In response, Mr Kroll argues that the appeal should be dismissed. He argues that lengthy pleadings are not a helpful factor in deciding the quantum of security for costs ordered, especially since the SOC (dated 18 March 2022) was only 47 pages long.[229] Further, the pleadings are lengthy primarily because the second to fourth Defendants have each filed an individual defence, despite the high degree of similarity in their defences.[230] In addition, it is contended that

225 Defendants' Written Submissions for HC/RA 169/2022 at 7.1.

226 Defendants' Written Submissions for HC/RA 169/2022 at para 7.2.

227 Defendants' Written Submissions for HC/RA 169/2022 at para 7.3.

228 Defendants' Written Submissions for HC/RA 169/2022 at para 10.

229 Plaintiff's Written Submissions for HC/RA 169/2022 at para 15.

230 Plaintiff's Written Submissions for HC/RA 169/2022 at para 16.

where there are two (or more) co-defendants, the general rule is that only one set of costs is normally payable in the event that both (or all of them) succeed in the action – even if they are separately represented. The court should therefore not be minded to award any uplift based on the number of individual defendants.[231]

179 Having considered parties' submissions, I dismiss the appeal in RA 169. The crux of the second to fourth defendants' arguments is that the work done for the defence of one defendant is very different from the work to be done for the defence of the other defendants, and that this justifies an order for security of $62,500 *per* each defendant. However, as I observed in the course of the second to fourth Defendants' oral submissions, an examination of the pleadings did not actually reveal that the second to fourth defendants had each taken a "very different" substantive position in their respective defences.[232] In respect of Mr Kroll's complaint of share dilution, all three defendants take the position that the share dilution was not oppressive because all other shareholders' shareholdings were similarly diluted, and the dilution was necessary to allow CTX to benefit from Dr Bai's financial rescue package. As for the pre-30 April 2021 conduct complained of by Mr Kroll (*eg*, the Zeepson and Saibotan contracts), Mr Wong and Ms Hong deny any wrongdoing and / or any oppression of Mr Kroll's minority interest, while Dr Bai essentially dissociates himself from the pre-30 April 2021 events.

180 Given the circumstances, I do not see any basis for ordering separate security of $62,500 *per* each defendant.

---

231 Plaintiff's Written Submissions for HC/RA 169/2022 at para 17.

232 Transcript 5 July 2022 at p 62, lines 15 – 25.

Conclusion

181 I will hear parties on the costs of SUM 1507 and RA 169.

Mavis Chionh Sze Chyi
Judge of the High Court

Tan Chee Meng SC, Chang Qi-Yang, Tan Ee Hsien and Thio Li Fong Michelle Theresa (WongPartnership LLP) for the plaintiff.
Jimmy Yim Wing Kuen SC, Chen Jie'An Jared, Eunice Lau Guan Ting (Drew & Napier LLC) for the 1st Defendant.
Raeza Khaled Salem Ibrahim, Shannon Yeo Feng Ting, Kimberly Ng Qi Yuet (Salem Ibrahim LLC) for the 2nd, 3rd and 4th Defendants.